115-454

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. ~~889~~. 42

ASAHEL GAGE, APPELLANT,

vs.

MARIA B. PUMPELLY AND ADELINE P. KIDD, EXECUTRIXES AND HEIRS AT LAW, EDWARD WADE, EXECUTOR, AND DELPHINE M. P. READ, HEIR AT LAW OF HARMON PUMPELLY, DECEASED.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 4, 1882.

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court rooms, in the city of Chicago, in the district aforesaid, before the Hon. Henry W. Blodgett, district judge of the United States for said northern district of Illinois, on Monday, the fifteenth day of May, in the adjourned May term of said court, in the year of our Lord one thousand eight hundred and eighty-two, and of our Independence the one hundred and sixth year.

WILLIAM H. BRADLEY, *Clerk.*

HARMON PUMPELLY *vs.* ASAHEL GAGE. } 17141. In Chancery.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered, that on the sixth day of September, A. D. 1880, there was filed in the office of the clerk of the circuit court of the United States for said northern district of Illinois, at Chicago, in said district, a transcript of the record from the superior court
2 of Cook county, State of Illinois, in said above-entitled cause, which said transcript of record is in the words and figures following, to wit:

3 *Transcript of Record.*

UNITED STATES OF AMERICA:

STATE OF ILLINOIS, *County of Cook,* } *ss:*

Pleas before the Honorable John A. Jameson, one of the judges of the superior court of Cook county, in the State of Illinois, holding a branch court of said court at a regular term of said superior court of Cook county, begun and holden at the court-house, in the city of Chicago, in said county and State, on the first Monday, being the second day of August, in the year of our Lord one thousand eight hundred and eighty, and of the Independence of the United States of America the one hundred and fifth.

Present: The Honorable John A. Jameson, judge of the superior court of Cook county; Luther Laflin Mills, prosecuting attorney; John Hoffman, sheriff of Cook county.

Attest: JOHN J. HEALY, *Clerk.*

4 Be it remembered, that heretofore, to wit, on the 28th day of June, in the year of our Lord one thousand eight hundred and eighty, Harmon Pumpelly, complainant, by Mattocks and Mason, his solicitors, filed in the office of the clerk of the superior court of Cook county a certain bill to remove cloud and affidavit of non-residence, which are in the words and figures as follows, to wit:

Bill to Remove Cloud.

STATE OF ILLINOIS, } ss:
County of Cook, }

Superior Court of Cook County, of the July Term, A. D. 1880. In Chancery.

HARMON PUMPELLY *vs.* ASAHEL GAGE.

To the judges of said court in chancery sitting:

Humbly complaining, your orator, Harmon Pumpelly, brings this his bill against Asahel Gage, and respectfully shows unto
5 your honors that he is the owner of certain premises situated in the county of Cook, in the State of Illinois, known and described as lot six (6), in block fifty (50), Elston addition to Chicago.

That on or about October 27, A. D. 1874, a certificate of sale for the State and county taxes of A. D. 1873, amounting to $25.56, on certain premises described as lot 6, in block 50, in Elston's addition to Chicago, was issed to the said Gage. That on or about September 6, 1877, said Gage obtained a tax deed to the premises last described; that the said deed has been recorded, and is a cloud upon your orator's title to the premises first aforesaid.

Your orator further shows that the constitution of the State of Illinois gives a right of redemption from all tax sales to both the owners of the lands and the premises interested therein, and requires that a reasonable notice of the fact of sale and of the expiration of the time of redemption shall be given to owners and to parties interested therein.

Your orator further shows that on, to wit, August 4, A. D. 1871, one Thomas Armstrong conveyed the said premises to Ira
6 Scott, as trustee, and to Frank C. Taylor, as successor, in trust, to secure his, said Armstrong's, note for $15,000, payable to the order of your orator eight years from date; all of which will more fully appear from the original instrument, to which your orator craves leave to refer; and that from the date of said deed said Armstrong owned only an equity of redemption in said premises, which has since been foreclosed and conveyed to your orator, and that the legal title to said premises was by said trust deed vested in said Ira Scott, with reversion to said Frank C. Taylor, for the use and benefit of your orator, and that all persons dealing with or concerning said premises after the date of the record of said trust deed, to wit, the 31st day of August, A. D. 1871, had full notice that the said Ira Scott and Frank C. Taylor were the legal owners of said land, and that their ownership was for the use and benefit of your orator, and that said Armstrong had no interest therein except as the owner of the equity of redemption; that said deed was
7 re-recorded March 13, A. D. 1872.

Your orator further shows that the said Ira Scott and Frank C. Taylor were, from 1873 to 1878, citizens of the State of Illinois, and residents in Cook county, and that your orator was, from 1873

to 1878, a resident of the city of Albany, in the State of New York, and that the recitals of said trust deed were notice of this last fact.

Your orator further shows that by warranty deed, dated July 6, 1875, and recorded in the recorder's office of Cook county, July 7, 1875, the said Thomas Armstrong conveyed all his interest in said property to one Cecelia Josephine Bracken, who was thenceforth, and until your orator's title to said premises became absolutely by foreclosure as aforesaid, the owner of the equity of redemption therein.

Your orator further shows that said Gage caused a notice, entitled "To —— or whom it may concern," to be served upon Thomas Armstrong, June 21, 1876, and upon certain persons to your orator unknown, and mentioned in the affidavit to said notice, on
8 file with the county clerk of said county as "Bassett and Hammond," June 16, 1876; that said premises were not taxed or assessed for the years 1873 and 1874 in the name of any person, and were not in the actual possession or occupancy of any person in the year 1876, and that no advertisement of said sale, and the expiration of said rememption, was published by said Gage, as by law required.

Your orator further shows that among the taxes assessed against said premises for the year 1873, and for which judgment was entered against said premises, the same were sold to said Gage, as hereinbefore set forth, were the taxes levied and assessed by said county of Cook for the year A. D. 1873; that the total tax levied and assessed by said county, for said year was, to wit, $1,227,365, and that as part of said $1,227,365, the following sums were levied and assessed for the following illegal purposes, to wit, the sum of fourteen thousand ($14,000) dollars for the per diem and mileage of the county commissioners of Cook county, which said per diem was reckoned
9 at $5 per day for each commissioner, when it was by law $2.50 per day; that the sum thus levied, assessed, collected, and disbursed to pay said illegal tax for said illegal purpose of doubling said commissioners' lawful salaries, was not less than $3,700, or three per cent of the whole tax.

Your orator further shows that the county court of Cook county had no jurisdiction to enter judgment against said premises for the proportion of said tax levied and assessed for said purposes; that, nevertheless, said court proceeded to enter judgment for the whole of said tax, including said illegal items, and that the said judgment was null and void.

That your orator is ready and willing, in reference to this and to the deed hereinafter set forth, to pay all the disbursements of said Gage for legal taxes on said property, with interest at six per cent. per annum upon said disbursements, or such greater payment as to the court may seem proper; and your orator hereby offers to
10 do so upon the execution and delivery by said Gage of proper release or releases; but your orator avers and insists that if he is obliged to maintain his right to said relief by litigation, then no such conditions should be required of him as terms of said relief.

Your orator further shows that at a tax sale in said county of

Cook, held in October, A. D. 1877, to wit, on the 3rd day thereof, a certificate was issued to said Gage for premises described as lot 6, in the re-subdivision of block 50, in Elston's addition to Chicago; that the same were sold to said Gage for the State and county taxes of A. D. 1874 and the city, county, and State taxes of A. D. 1875 and A. D. 1876, amounting, with 53 c. of costs, to $224.89, and that by tax deed, dated February 4, 1880, recorded February 7, 1880, in book 975 of records of Cook county, at page 198, one Ernst F. C. Klokke, then county clerk of Cook county, pretended to convey said premises, in pursuance of the last aforesaid sale, to said Gage; that said deed is a cloud upon the title of your orator.

11 Your orator further shows that a large portion of the taxes levied by the city of Chicago for the year 1875 was illegal, which illegal items were contained in the appropriation ordinance and the levy ordinance of the city of Chicago for the year 1875, and were certified to the county clerk of Cook county, Illinois, by the city clerk of said city of Chicago, and were by said county clerk spread upon the property of your orator, upon a valuation thereof made by the assessor of the town of North Chicago, in said county of Cook, in connection with the State, county, school, and other taxes for the same year, 1875; that the illegal taxes consisted, *inter alia*, of the following items: $2,000 for the purpose of entertaining official visitors; $300,000 for payment of interest on general bonded municipal debt of the city and on temporary loans, in addition to the unexpended balance on the first day of April, 1875; $25,000 for interest on temporary loans for fire department of the city; $40,000 for interest on temporary loans for water funds; $25,000 for

12 interest on temporary loans for police department, which were all illegal, and the levies for which were illegal and void, for the reason that they were to discharge obligations (so called) which were in excess of the constitutional limitations of the debt of said city of Chicago.

Your orator further shows that he did not know the illegal character of the said taxes until the supreme court of this State decided them to be illegal.

Your orator further shows that all the foregoing illegal taxes were actually levied in part upon the land aforesaid for said year 1875; that the said city taxes for said year aggregate $5,123,905.29, and that the illegal portion thereof amounts to from 9 per cent. upwards of the levy by said city for said year.

Your orator further shows that the supreme court of this State, in the case of Ida Irene Law *et al. v.* The People, *ex rel* Huck, has decided the foregoing taxes, specifically stated, to be null and void, and has held that the judgment of the county court of Cook

13 county for the whole of said city tax of 1875 was rendered in error.

Your orator further shows that nevertheless, and without authority of law, the said county court entered judgment against your orator's land for said illegal tax, and ordered the said land to be sold for said illegal taxes, and other taxes, and on the twentieth day of October, A. D. 1876, the said land was actually sold under

said erroneous judgment for $224.89, including the said illegal taxes, and other taxes mixed up therewith, and a certificate of sale for said taxes issued on or about said 3d day of October, A. D. 1877, to said Gage.

Your orator further shows that the judgment of said county court, the sale thereunder, and the certificate aforesaid, are void for want of legal warrant for the entry of said judgment.

Your orator further shows that he is, and has ever been, ready to pay that portion of said tax which is lawful, and he is now ready and offers to pay the lawful portion of said taxes, but he has never known, and does not now know, what is the exact per cent-
14 age of legal city taxes for said levy of A. D. 1875, but he is informed and believes that it does not exceed 91 per cent. of said levy.

For as much, therefore, as your orator is without remedy in the matter by the strict rules of the common law, and can only have relief in a court of chancery, where such matters are properly cognizable, your orator prays for the issuance herein of the people's writ of summons in chancery, to said Asahel Gage directed, commanding him to appear and answer this your orator's bill of complaint, but not under oath, answer under oath being hereby expressly waived, and that upon a final hearing herein the said Gage be decreed to convey, or cause to be conveyed, to your orator, all rights, titles, and interests acquired by said deeds, and each of them, upon such terms and conditions as unto your honors may seem meet, and for such other and further and better relief as unto your honors may seem fit and the nature of the case may require.

And your orators will ever pray, etc.

15 HARMON PUMPELLY,
By MATTOCKS AND MASON,
His Attorney-in-Fact.

MATTOCKS AND MASON,
Complainant's Solicitors.
ALFRED BISHOP MASON,
Of Counsel.

In the Superior Court of Cook County, June Term, A. D. 1880.

HARMON PUMPELLY *vs.* ASAHEL GAGE.

Alfred Bishop Mason, being first duly sworn, saith under oath that he is one of the attorneys of complainant herein, and that the defendant, Asahel Gage, resides outside of this State, in Vineland, New Jersey, as affiant believes and is informed by relatives of said Gage, and by the receipt of letters from said Gage, dated and postmarked at said Vineland.

ALFRED BISHOP MASON.

Subscribed and sworn to before me, this 28th day of June, A. D. 1880.

16 [SEAL.] WALTER MATTOCKS,
Notary Public.

And afterwards, to wit, on the 9th day of July, in the year last aforesaid, to wit, A. D. 1880, there was filed in the office of the clerk of said court a certain certificate of mailing notice, which is in the words and figures as follows, to wit:

Certificate.

Superior Court of Cook County.

STATE OF ILLINOIS, } ss:
County of Cook, }

HARMON PUMPELLY } Chancery.
vs.
ASAHEL GAGE. }

I, John J. Healy, clerk of the superior court of Cook county, in and for said county, in the State of Illinois, do hereby certify that on the 9th day of July, A. D. 1880, I sent by mail a notice, a copy of which is hereto attached, marked Exhibit "A," to the following named defendant, and addressed as follows, one copy to Asahel Gage, Vineland, New Jersey.

JNO. J. HEALY, *Clerk.*

17 EXHIBIT "A."

Mattocks & Mason, Attorneys, 40 Dearborn St.

STATE OF ILLINOIS, } ss:
County of Cook, }

Superior Court of Cook County, June Term, A. D. 1880.

HARMON PUMPELLY } In Chancery.
vs.
ASAHEL GAGE. }

Affidavit of the non-residence of Asahel Gage, defendant above named, having been filed in the office of the clerk of the superior court of Cook county, notice is hereby given to the said Asahel Gage that the above-named complainant heretofore filed his bill of complaint in said court on the chancery side thereof, and that a summons thereupon issued out of said court against the above-named defendant, returnable on the first day of the term of the superior court of Cook county, to be held at the court-house, in Chicago, in said Cook county, on the first Monday of August,
18 (1880,) as is by law required, and which suit is still pending.

JNO. J. HEALY, *Clk.*

MATTOCKS & MASON, *Compl'ts Sol'rs.*

And afterwards, to wit, on the fourth day of August, in the year last aforesaid, the same being one of the days of the August term, A. D. 1880, of said court, the following among other proceedings were had in said court, and entered of record, to wit:

Order.

HARMON PUMPELLY
vs.
ASAHEL GAGE. } 76173. Bill.

On motion of complainant leave is hereby given him to attach the jurat to the affidavit of non-residence filed herein.

And on the day and year last aforesaid, to wit, August 4th, 1880, the defendant, by A. N. Gage, his solicitor, filed in said clerk's office his certain appearance in writing, which is in the words and
19 figures following, to wit:

Appearance.

STATE OF ILLINOIS, } ss.:
County of Cook, }

In the Superior Court of Cook County.

HARMON PUMPELLY
vs.
ASAHEL GAGE. } In Chancery.

I hereby enter the appearance of Asahel Gage, the defendant above named, saving an exception to the service of process upon said defendant, and an exception to the order allowing the complainant to attach a jurat to a so-called affidavit of non-residence filed herein.

ASAHEL GAGE,
By AUGUSTUS N. GAGE,
Solicitor & of Counsel.

And afterwards, to wit, on the eighteenth day of August, A. D. 1880, said defendant, by his solicitor, filed in said clerk's office his certain petition and bond, which are in the words and figures following, to wit:

20 *Petition.*

STATE OF ILLINOIS, } ss.:
Cook County, }

In the Superior Court of Cook County. To the August Term, A. D. 1880.

HARMON PUMPELLY *vs.* ASAHEL GAGE.

Petition for removal to the circuit court of the United States for the northern district of Illinois.

The the honorable the judges of said superior court, in chancery sitting:

Your petitioner, Asahel Gage, respectfully shows that he is the

defendant in the above-entitled suit; that at the time of the commencement of said suit he was and still is a citizen and resident of the State of New Jersey; that the said complainant, the said Harmon Pumpelly, as defendant, this petitioner is informed and verily believes, was, at the time of the commencement of said suit and still is, a citizen and resident of the State of New York.

21 Your petitioner further states that in the said suit there is a controversy which is wholly between citizens of different States, and which can be fully determined as between them, to wit, a controversy between Harmon Pumpelly, who is a citizen and resident of the State of New York, and your petitioner, who is a citizen and resident of the State of New Jersey.

Your petitioner further states that said suit was commenced in this court on or about the 28th day of June, A. D. 1880; that the term of said court at which the same could be first tried is the August term, A. D. 1880, thereof, and that the matter and amount in dispute in said suit exceeds, exclusive of costs, the sum or value of five hundred dollars.

And your petitioner offers herewith a bond, with good and sufficient surety, for his entering in said circuit court of the United States, on the first day of its next session, a copy of the record in the suit, and for paying all costs that may be awarded by said

22 circuit court, if said court shall hold that this suit was wrongfully or improperly removed thereto.

Your petitioner, therefore, prays that the said surety and bond may be accepted, and that an order may be made and entered by this honorable court herein removing said suit into the said circuit court of the United States for the northern district of Illinois, according to the statutes in such case made and provided. And your petitioner will ever pray, &c.

ASAHEL GAGE,
By AUGUSTUS N. GAGE,
His Attorney-in-Fact.

AUGUSTUS N. GAGE,
Solicitor & of Counsel for Defendant.

STATE OF ILLINOIS, }
Cook County, } *ss:*

I, Augustus N. Gage, being duly sworn, say that I am the solicitor of the petitioner aforesaid; that I have read the foregoing petition and know the contents thereof, and that the statements therein contained are true, as I verily believe.

AUGUSTUS N. GAGE.

23 Subscribed and sworn to before me, this 17th day of August, 1880.

[SEAL.] TAYLOR A. SNOW,
Notary Public.

Bond.

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Superior Court of Cook County, to the August Term, A. D. 1880.

HARMON PUMPELLY } In Chancery.
vs.
ASAHEL GAGE. }

Know all men by these presents that we, Asahel Gage, of the county of Cumberland and State of New Jersey, and Henry H. Gage, of Cook county, Illinois, are held and firmly bound unto Harmon Pumpelly in the sum of five hundred dollars ($500), good and lawful money of the United States of America, to be paid to the said Harmon Pumpelly, or to his executors, administrators, or assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, jointly, severally,
24 & firmly by these presents.

Sealed with our seals, and dated this 16th day of August, A. D. 1880.

The condition of the above obligation is such that whereas Harmon Pumpelly has filed with the clerk of the superior court of Cook county a bill of complaint against the above-bounden Asahel Gage; and whereas the said Asahel Gage is a non-resident of the State of Illinois, and is a resident and citizen of the State of New Jersey; and whereas said Asahel Gage has filed with said clerk of said superior court of Cook county in said cause a petition for the removal of said cause to the circuit court of the United States for the northern district of the State of Illinois:

Now, therefore, if the said Asahel Gage shall enter in said circuit court on the first day of its next session a copy of the records of said suit, and shall pay all costs that may be awarded by said circuit court if said court shall hold that said suit was wrongfully or
25 improperly removed thereto, then this obligation to be void; otherwise to remain in full force and virtue.

ASAHEL GAGE. [SEAL.]
By AUGUSTUS N. GAGE, [SEAL.]
His Attorney-in-Fact.
HENRY H. GAGE.

Approved.
J. A. JAMESON,
Judge Sup'r C't of Cook County.

And afterwards, to wit, on the twenty-third day of August, A. D. 1880, the same being one of the days of the August term of said court, the following, among other, proceedings, were had in said court and entered of record, to wit:

HARMON PUMPELLY } 76173. Bill.
vs.
ASAHEL GAGE. }

On the petition of the defendant filed herein, it is ordered that this cause be, and is hereby, transferred to the circuit court of the United States in and for the northern district of the State of Illinois, and that the clerk of this court do forthwith transmit to said United
26 States circuit court a transcript of all papers and pleadings filed in this cause, and of all orders made and entered of record herein.

STATE OF ILLINOIS, } *ss:*
Cook County, }

I, John J. Healy, clerk of the superior court of Cook county, within and for said county and State, do hereby certify that the above and foregoing is a full, true, correct, and complete transcript of the record in a certain cause lately pending in said court, on the chancery side thereof, wherein Harmon Pumpelly was complainant and Asahel Gage was defendant.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at Chicago, this 24th day of August, A. D. 1880.

[SEAL.] JNO. J. HEALY, *Clerk.*

Fees, 6.00; paid by defendant.

Endorsed: Filed Sept. 6, 1880. Wm. H. Bradley, cl'k.

27 Afterwards, to wit, on the eleventh day of September, A. D. 1880, came the defendant, by his solicitor, and filed in said clerk's office his answer in said entitled cause, which said answer is in words and figures following, to wit:

28 *Answer.*

UNITED STATES OF AMERICA, } *ss:*
State of Illinois, }

In the Circuit Court of the United States for the Northern District of Illinois.

HARMON PUMPELLY, } In Chancery.
vs
ASAHEL GAGE. }

The answer of Ashael Gage, the defendant, to the above-entitled cause.

This defendant, now and at all times hereafter saving to himself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said complainant's said bill of complaint contained, for answer thereto, or to so much and such parts thereof as this defendant is advised it is or may be material or necessary for him to make answer unto, answering says, that he denies

that the said complainant, the said Harmon Pumpelly, is the owner of lands and premises mentioned in said bill, and known and described as follows, to wit:

29 Lot six (6), in block fifty (50), in Elston's addition to Chicago, as alleged in said bill, and this defendant denies that his tax deeds are clouds upon complainant's title, as alleged in the said bill, or that they are clouds at all; and this defendant denies that any portion of the taxes entering into the sales to him were void, as alleged in the bill; and this defendant denies that the county court erred in rendering judgment against said lands and premises, as alleged in the bill; and this defendant denies that said lands and premises were sold to him in error, as alleged in the bill; and this defendant denies that the proper notices were not served and that the deeds to him were improperly issued, as alleged in the bill; and this defendant denies that either of the said deeds to him are irregular or void, as alleged in the bill.

Further answering, this defendant admits that he claims title to said lands and premises under and by virtue of a tax deed dated on or about Sept. 6, 1877, and duly recorded in the recorder's

30 office of Cook county, Illinois, substantially as alleged in said bill of complaint, and more accurately as hereinafter stated.

Further*ing* answering, this defendant admits that he claims title to said lands and premises under and by virtue of another tax deed, dated February 4, 1880, and duly recorded in the recorder's office of Cook county, Illinois, in book 975 of records, at page 198, as document number 256278, on February 7, 1880, substantially as alleged in said bill of complaint, and more accurately as hereinafter stated.

For a further answer, this defendant says that he claims title to said lands and premises by virtue of a title of inheritance in the law in fee-simple, obtained and derived in the following manner, that is to say, by virtue of two tax deeds thereto, based upon sales of said lands and premises for delinquent taxes thereon due and unpaid, which said sales thereof were made under the authority and by virtue of judgments of the county court of Cook county, Illinois, proceeding *in rem* against said lands and premises for the collec-

31 tion of the delinquent taxes levied and assessed thereon, remaining due and payable and unpaid, and in favor of the people of the State of Illinois, in such case made and provided by the statutes of the State of Illinois, which said tax deeds were duly recorded in the recorder's office of Cook county, Illinois, and are matters of public record of said county.

For a further answer, this defendant says that the State, county, and other taxes levied and assessed upon said lands and premises for the year 1873 were not paid within the time required by law, and became due and delinquent, and thereupon and heretofore, to wit, upon the 8th day of August, 1874, the county treasurer and *ex officio* collector of the revenue of Cook county, Illinois, made a delinquent tax list of lands and premises, which was filed with the clerk of the county court of Cook county, Illinois, on the day and year last aforesaid, which said list showed the lands and premises mentioned in said bill to be delinquent in the taxes assessed

32 thereon for said year 1873 for the sum of $26.83, and to the correctness of said delinquent list the said county collector did, on the day and year last aforesaid, make his affidavit, duly sworn to, before the clerk of the county court aforesaid.

And on, to wit, the 24th day of July, A. D. 1874, the said county treasurer did a-vertise the said delinquent list in the Inter-Ocean, which said advertisement was the process of service in the proceedings *in rem.*, hereinafter more fully mentioned and set out; that by said advertisement the said county treasurer gave notice that, upon the 17th day of August, 1874, he would apply to the county court of Cook county, Illinois, for a judgment against said lands and premises for said taxes and costs, and a further notice that he should ask for an order of sale to sell said property to satisfy said judgment, and that upon the 28th day of September, A. D. 1874, the said lands and premises would be exposed to public sale.

And afterwards, to wit, on the 17th day of August, 1874, the said county treasurer made a corrected delinquent tax-list, as re-
33 quired by law, and verified the same by his oath -hereto, sworn to before the said clerk of the county court; and thereupon there was such proceedings had in the said county court of Cook county, Illinois, aforesaid, in said proceedings *in rem.*, to wit:

In the matter of the application of HENRY B. MILLER, county treasurer and *ex officio* collector of the revenue of Cook county, for judgment for the delinquent State, county, town, school, road, and park taxes and special assessments, levied and assessed upon the lands and lots in the county of Cook and State of Illinois for the year 1870, and for judgment for the delinquent State, county, town, school, road, and park taxes and special assessments, and costs thereof (if any), contained in the collector's books, with the
34 warrants attached thereto, issued by the county clerk of Cook county, State of Illinois, for the year 1873, which now remain due and unpaid, and for judgment for the amount for which lands and lots were forfeited to the State of Illinois for the years 1872 and 1871, together with interest at ten per cent., and costs remaining due and unpaid thereon.

That a judgment was rendered on, to wit, the 9th day of September, 1874, against said lands and premises mentioned and described in said bill, and in favor of the people of the State of Illinois, for the said delinquent taxes remaining due and unpaid thereon, and costs, amounting to the sum of $25.56, and an order of the sale thereof, and thereupon a precept or execution was issued commanding the sale of said lands and premises to satisfy said judgment; and afterwards, to wit, on the 27th day of October, 1874, the said lands and premises were sold under and by virtue of said judgment and execution to A. Gage, and a certificate thereof issued to him.

35 And the said lands and premises not having been redeemed from the force and effect of said sale within the time and in the manner prescribed by law by the statutes of the State of Illinois, in such case made and provided, this defendant on, to wit, the 6th day of September, A. D. 1877, being the holder of said certificate of

sale, and the owner thereof, presented the same to the county clerk of Cook county, Illinois, accompanied by the proper affidavits showing the facts relied upon by this defendant as compliance with the provision of the statutes of the State of Illinois, in such case provided, to entitle him to a tax deed; and thereupon, to wit, on the day and year last aforesaid, the then county clerk of Cook county executed, acknowledged, and delivered to this defendant a deed to said lands and premises; and thereupon, to wit, on the 7th day of September, 1877, the said deed was duly filed for record in the recorder's office of Cook county, Illinois, as document numbered 149471, and duly recorded in book 777 of records, at page 19, all of which is matter of public record, and will more fully and at large
36 appear by reference to the public records of Cook county, Illinois, aforesaid, which said records, or duly certified copies thereof, are in the possession of this defendant, and ready to be produced, as this honorable court may direct; and this defendant claims the same benefit and advantage as if he had pleaded the said judgment and records in for of the relief claimed by said complainant in and by his said bill of complaint, and this defendant, for the reasons and under the circumstances aforesaid, is advised and insists that the said complainant is not entitled to any relief against this defendant touching the matters complained of in the said bill of complaint.

For a further answer, this defendant says he is the owner of said lands and premises in fee simple, under a judicial sale thereof, derived in the following manner, that is to say, heretofore, to wit, on May 1, 1877, there was filed with the clerk of the county court of Cook county, Illinois, a certain document, being a list of delinquent lands and lots in said county upon which remained due and
37 unpaid the taxes of the year 1876, and back taxes of other years, showing the names of owners so far as known, the description of the property, the valuation on which the taxes were extended, the amount of each kind of tax, and interest and costs, and the total amount charged, from which it appears the said lands and lots mentioned in said bill had no name attached as the owner thereof, that they were valued at $2,402 for the purpose of extending the tax, and that they were charged for all taxes the sum of $224.36, and that attached to said list is the affidavit of Louis C. Huck, the collector of Cook county, verifying the correctness thereof.

And thereupon, to wit, on the 11th day of June, 1877, there was filed in the office of the clerk of the county court a certain document, which was an advertisement of the Cook county delinquent list, and which contained the lands and premises aforesaid, and attached to said advertisement is the certificate of the publisher certifying that the same had been advertised in the Inter-Ocean, a daily newspaper published in Cook county and having a gen-
38 eral circulation, and that the date of the paper containing the same was the 18th day of May, 1877, and was published for the length of time required by law. The said advertisement contained a public notice that the county treasurer would apply to the county court on the 11th day of June, 1877, for judgment against

said lands and premises for the said amount due thereon, together with interest and costs, and for an order to sell the same to satisfy said judgment, and that on the 23d of July, 1877, said lands and premises would be exposed to public sale, and thereupon, to wit, on the day and year last aforesaid, the said county collector did correct said delinquent list, as provided by law, and did make his affidavit to the correctness thereof, which said corrected list contained said lands and premises with no change made thereto, and thereupon, on the day and year last aforesdid, there were such proceedings had in said county court.

39 In the matter of the application of LOUIS C. HUCK, county treasurer and *ex officio* collector of the revenue of Cook county, in the State of Illinois, for judgment for the delinquent State, county, town, school, road, city, village, park, and corporation taxes and assessments levied and assessed upon the lands and lots in the county of Cook, in the State of Illinois, for the year 1876, and for the back taxes and forfeitures to the State, together with interest, printers' fees, and costs, due and unpaid thereon.

That upon the application of said Louis C. Huck for said judgment against real estate, to wit, the said lands and premises, it appearing to said court, and the court finding from the evidence, that due notice, as required by law, had been given of the intended application for judgment, it was ordered that all objections to the rendition of judgment must be filed in writing by June 18 next.

40 And thereupon, to wit, on July 9, 1877, it was ordered by said court that default be entered against all the real estate in said list mentioned, to which no objections to the rendition of judgment was filed. And thereupon, to wit, on the 12th day of July, 1877, there were such further proceedings had in court in said cause, that a judgment was entered against said lands and lots mentioned in said bill of complainant; and in said judgment it is, *inter alia*, ordered all other objections filed in said cause to the rendition of judgment against the lands mentioned in said delinquent list, to wit, the lands and premises mentioned in said bill, be overruled. And it is in said judgment recited that due notice of the intended application for judgment was given, and no sufficient reason shown why judgment should not be entered against said lands and lots for the said taxes thereon due and unpaid. Therefore, it was considered and ordered that judgment be, and it was thereby, entered by said court against said lands and premises for the sum annexed thereto,

41 being the amount of taxes, costs, &c., to wit, the sum of $224.89; and it was therein ordered by said court that said lands and premises be sold to satisfy said judgment, as the law directs.

And thereupon, to wit, on the 23d day of July, 1877, the cl'k of said county court duly certified a copy of said judgment and order of sale aforesaid, which became and was the precept and authority for the sale of said lands and premises to satisfy said judgment and order of sale, and became and was the process and record of sale of said lands and premises for said delinquent taxes, and upon the re-

turn thereon indorsed, it appears the said lands and premises were sold thereunder on, to wit, the 3d day of October, A. D. 1877, to this defendant, for the said sum of $224.89; and thereupon, to wit, on the 4th day of February, A. D. 1880, the county clerk of Cook county aforesaid executed, acknowledged, and delivered to the defendant a deed to said lands and premises, under and by virtue of said proceedings, judgment, and sale aforesaid, in accordance with the provisions of the statutes of the State of Illinois, in such case
42 made and provided; and afterwards, and on the 7th day of February, 1880, the said deed was duly recorded in the recorder's office of Cook county, Illinois, as document numbered 256,278, and duly recorded in book 975 of records, at page 198, all of which is matter of public record, and will more fully and at large appear by reference to the public records of Cook county, and State of Illinois aforesaid, which said records, or duly certified copies thereof, are in the possession of this defendant and ready to be produced, as this honorable court may direct, and this defendant claims the same benefit and advantage as if he had pleaded the said judgment and records in bar of the relief claimed by said complainant in and by his said bill of complaint; and this defendant, for the reasons and under the circumstances aforesaid, is advised and insists that the said complainant is not entitled to any relief against this defendant touching the matters complained of in the said bill of complaint.

Further answering, this desendant says, and doth and will insist, that the said county court of Cook county, Illinois, is a court
43 of record, having general jurisdiction of the subject matter aforesaid, and its proceedings aforesaid were *in rem;* that the said *res* (being the lands and premises aforesaid) was before the said court, and said court having jurisdiction thereof, did proceed and adjudicate thereon, and that said findings and judgments of said court are *res adjudicata,* and are still in full force and effect, and that the said complainant never appealed from or sued out any writ of error to said judgments, and that the same and the recitals thereof are binding and conclusive upon the said complainant, and cannot be collaterally attached or inquired into, and that the said complainant is, and in law and in equity ought to be, now estopped from questioning or collaterally assailing the said judgment in the manner the same is sought to be done by said complainant in and by his said bill of complaint, and that upon this account the said bill should be dismissed, and this defendant claims the same benefit and advantage of this exception as if he had specially demurred
44 to said bill upon this ground.

For a further answer, this defendant says that said complainant, while asking the intervention of this court in his behalf against this defendant, does not offer to do equity towards him, but seeks to set aside defendant's tax deeds as clouds upon his alleged title without offering to pay or alleging that he has paid or offered to pay the taxes on said lands and premises, or any part thereof, which, as it appears in and by said bill of complaint, this defendant has paid as in equity and good conscience said complainant ought to do, and this defendant says, and doth and will insist, that the

said bill is in this respect without equity and ought to be dismissed, and defendant claims the same benefit and advantage of this exception as if he had demurred to said bill specially upon this account.

For a further answer, this defendant says that the said complainant has not in and by his said bill of complaint shown any defects or irregularities in the affidavits of service of notice or notices
45 served, or the service thereof, or which his prayer for relief is founded, and while claiming by his said bill that no notice (as required by law) has been given by this defendant of the fact of the said sale, the complainant by said bill recites the fact of service of notices by this defendant, and this defendant says, and doth and will insist, that the said bill is in this respect uncertain, informal, and argumentative, and ought to be dismissed.

And this defendant claims the same benefit and advantage of this exception as if he had demurred specially to said bill of complaint.

For a further answer, this defendant says that said complainant has an adequate remedy at the common law in the action of ejectment, as appears in and by the said bill of complaint, and the said bill should therefore be dismissed, and this defendant claims the same benefit and advantage of this exception as if he had demurred specially to said bill.

For a further answer, this defendant says that there is no privity of contract existing between said complainant and this de-
46 fendant, and that, therefore, the relief sought by said bill cannot be granted, and said bill should for this reason be dismissed, and this defendant claims the same benefit of this exception as if he had demurred specially to the said complainant's said bill of complaint.

For a further answer, this defendant says that he bought said lands and premises upon August 27, 1866, for the delinquent State and county taxes thereon of 1865, and a certificate of purchase issued thereon to this defendant, which said certificate of purchase was afterwards destroyed by the great fire which occurred in Chicago on or about October 9, 1871, and that afterwards this defendant paid the following taxes upon said lands and premises, to wit: Upon September 6, 1878, the 3rd installment of the Lincoln Park special assessment; upon Sept. 25, 1878, the State and county taxes of 1877, and the city taxes for the years 1873 and 1874; and upon May 1, 1880, the State and county taxes of 1879, and the 5th installment of the Lincoln Park special assessment, which said taxes amounts
47 to many hundred dollars, to wit, to more than $300\frac{00}{100}$, and defendant says the complainant has not, in and by said bill, in any way mentioned the said taxes paid by this defendant, or offered to repay to this defendant the amount thereof, or any other sum therefor, as in equity and good conscience he should do, and as in equity he will be required to do before obtaining the relief asked in and by said bill; and this defendant says, and doth and will insist, that said bill is upon this ground inequitable, and should be dismissed.

For a further answer, this defendant says, and doth and will insist, that said judgments of said court under which he claims titles,

as aforesaid, are several judgments against said lands and premises for each kind of tax or special assessments therein mentioned, and that even if this honorable court should hold that said judgments were susceptible of being collaterally attacked, as the same is sought to be done in and by the said bill of complaint, still the said judgments of said court remaining unquestioned by said bill are
48 sufficient in law to authorize the sale of said lands and premises, as aforesaid; without this that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant, all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

ASAHEL GAGE,
By AUGUSTUS N. GAGE,
His Solicitor.

AUGUSTUS N. GAGE,
Of Counsel.

Endorsed: Filed Sep. 11, 1880. W. H. Bradley, clerk.

49 Afterwards, to wit, on the fifth day of October, in the adjourned October term, A. D. 1880, of said court, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

HARMON PUMPELLY *vs.* ASAHEL GAGE. } In Chancery.

On motion of complainant's solicitors, leave is given complainant to amend his bill of complaint herein instanter; and the defendant is ruled by the court to file his answer herein within ten days.

On the same day, to wit, on the fifth day of October, A. D. 1880, came the complainant, by his solicitors, and filed in said clerk's office an amendment to the bill of complaint in said entitled cause; which said amendment is in the words and figures following, to wit:

Amendment to Bill.

In the Circuit Court of the United States, Northern District of Illinois.

50 HARMON PUMPELLY *vs.* ASAHEL GAGE. } Amendment to Bill.

Now comes the complainant herein, by Mattocks & Mason, his

solicitors, and by leave of court first had and obtained amends his bill by inserting after the first paragraph thereof these words:

Your orator further shows that at the time of bringing this his said bill of complaint he was, has since been, and still is, in possession of the premises herein described, and that he entered upon said lands and took possession thereof under a deed thereof to him by the master in chancery of this court; which deed was approved by this court.

(Endorsed:) Filed Oct. 5, 1880. Wm. H. Bradley, clerk.

Afterwards, to wit, on the eleventh day of October, A. D. 1880, came the defendant, by his solicitor, and filed in said clerk's office his answer to the amended bill in said entitled cause; which said answer is in the words and figures following, to wit:

Answer to Amended Bill.

UNITED STATES OF AMERICA, STATE OF ILLINOIS, } ss:
County of Cook, }

50½ In the Circuit Court of the United States for the Northern District of Illinois.

HARMON PUMPELLY }
vs. } In Chancery.
ASAHEL GAGE. }

The answer of the defendant, Asahel Gage, to the amendment of the bill of complaint of Harmon Pumpelly, the above-named complainant.

This defendant for answer to said amendment to said bill, neither admits nor denies that the said complainant is in the possession of the lands and premises mentioned and described in the said bill of complaint, but leave said complainant to make proof thereof as he may be advised.

And this defendant claims the same benefit herein as he claimed in and by his answer to said bill of complaint.

ASAHEL GAGE,
By AUGUSTUS N. GAGE,
His Solicitor.

(Endorsed:) Filed Oct. 11, 1880. Wm. H. Bradley, clerk.

51 Afterwards, to wit, on the eighteenth day of October, A. D. 1880, came the complainant, by his solicitors, and filed in said clerk's office his replication to the answer as amended of the defendant in said entitled cause; which said replication is the words and figures following, to wit:

Replication.

U. S. Circuit Court, Northern District of Illinois.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois. }

HARMON PUMPELLY *vs.* ASAHEL GAGE.

The replication of complainant to the answer as amended of defendant: This repliant saving and reserving unto itself now and at all times hereafter all advantage of exception to said answer, saith he will aver, maintain, and prove his bill to be true, certain, and sufficient in law to be answered unto, and that the said answer is uncertain, untrue, and insufficient to be replied unto without this; that any other matter in said answer contained not sufficiently herein replied to is true. All which things this repliant is ready to aver, maintain, as the court may direct, and prays, as he hath already prayed.

MATTOCKS & MASON.

52 (Endorsed:) Filed Oct. 18, 1880. Wm. H. Bradley, cl'k.

On the same day, to wit, on the eighteenth day of October, in the adjourned October term, A. D. 1880, of said court, in the record of the proceedings thereof in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

HARMON PUMPELLY } In Chancery.
vs.
ASAHEL GAGE. }

On motion of Mr. Mason, solicitor, it is ordered by the court that this cause be referred to Henry W. Bishop, a master in chancery of this court, to take proofs herein, and report the same to the court.

Afterwards, to wit, on the 23d day of May, in the adjourned May term, A. D. 1881, of said court, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

53 *Order.*

HARMON PUMPELLY } In Chancery.
vs.
ASAHEL GAGE. }

Upon reading and filing the affidavit of Thomas G. Gibson and Alfred Bishop Mason herein, it appearing that due notice has been given of complainant's motion to refer this cause to a master in chancery to abstract the evidence, and no cause to the contrary being shown, it is ordered that said cause be referred to Henry W. Bishop, Esq., master, to abstract the evidence herein with all convenient speed, and that the proper charge of said master for services in this behalf be taxed as costs in this case.

Afterwards, to wit, on the fifteenth day of June, in the adjourned May term, A. D. 1881, of said court, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

HARMON PUMPELLY *vs.* ASAHEL GAGE. } In Chancery.

54 Now come the parties, by their solicitors, and the defendant moves the court for leave to amend his answer herein, and after hearing the same, the court sustains said motion and grants leave to defendant to amend his said answer, conditioned that it does not delay the final hearing of this cause; and it is ordered that the replication now on file herein do stand to the amended answer.

On the same day, to wit, on the fifteenth day of June, A. D. 1881, came the defendant, by his solicitor, and filed in said clerk's office his amendment to his answer in said entitled cause; which said amendment is in the words and figures following, to wit:

Amendment to Answer.

UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

In the Circuit Court of the United States for the Northern District of Illinois.

HARMON PUMPELLY *vs.* ASAHEL GAGE. } In Chancery.

55 The amendment of the answer of Asahel Gage, the above named defendant, to be inserted and read immediately before the final conclusion of said answer:

Leave of the court for this purpose having been first had and obtained, this defendant, further answering, says that heretofore, to wit, on the 14th day of August, A. D. 1879, the complainant herein filed an amended bill in a cause before that time commenced by said complainant against this defendant in this court, on the chancery side thereof, which said cause was entitled Harmon Pumpelly *vs.* Asahel Gage *et al.*, and was numbered 16306; that in and by said amended bill said complainant sought the same relief as in his said bill herein prayed, and for a temporary injunction against this defendant, restraining him from taking out a tax deed upon the property and for the taxes here in question; and that afterwards, to wit, on the 10th day of October, A. D. 1879, the said temporary injunction was granted as prayed; and afterwards, to wit, on the 18th day of October, A. D. 1879, the said defendant, Asahel Gage, filed a demurrer to said amended bill; and that afterwards, to wit, on the 29th day of November, A. D., 1879, the said demurrer of said defendant was

56 sustained by this court, which order sustaining said demurrer is in words and figures following, to wit:

Now come the parties, by their solicitors, and the court having considered and being now sufficiently advised upon the demurrer of the defendant to the amended bill herein, sustains said demurrer, and orders that this cause be dismissed at the costs of the complainant, without prejudice to the right of the complainant to bring an action at law or in equity if he should hereafter become possessed of a title to the premises mentioned in said bill; and it is thereupon ordered by the court that the defendants do have and recover of and from the complainant their costs and charges about their defense in this behalf expended, amounting to $13.90, and that execution issue therefor.

That said matters and things are matters of record of this court, and will more fully and at large appear by reference thereto, and this defendant claims the same benefit and advantage of said matters as if he had pleaded the same in for to the relief sought by the said complainant's said bill.

ASAHEL GAGE,
By AUGUSTUS N. GAGE,
His Solicitor.

AUGUSTUS N. GAGE,
Of Counsel.

(Endorsed:) June 14th, 1881. Filed June 15, 1881. Wm. H. Bradley, cl'k.

57 Afterwards, to wit, on the seventeenth day of October, in the adjourned October term, A. D. 1881, of said court, in the record of the proceedings thereof in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

HARMON PUMPELLY
vs.
ASAHEL GAGE. } In Chancery.

Now come the parties, by their solicitors, and thereupon this cause is submitted to the court upon pleadings and proofs and upon briefs, and the same is taken under advisement by the court.

Afterwards, to wit, on the ninth day of May, in the adjourned May term of said court, A. D. 1882, in the record of the proceedings thereof in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

HARMON PUMPELLY
vs.
ASAHEL GAGE. } In Chancery.

58 This cause having come on to be heard upon the bill of complaint herein, the answer thereto, the replication of the

complaint to such answer, and the proofs taken in said cause, and having been argued by counsel for the respective parties, and the court having duly considered the same and being fully advised in the premises, doth find that the material averments of the said bill are true, and that the complainant is entitled to relief thereon, but that in equity and good conscience the said complainant, as a condition of relief, should pay unto the said defendant the redemption moneys allowed by statute had the judgments and sales been for the proper amount of taxes, to be ascertained by deducting the erroneous tax in each case from the amount of the judgment, and that the said complainant should pay interest upon such proper amounts at the rate of six per cent. per annum in each case from the expiration of two years after the tax sale, and that the said complainant should also repay to the said defendant the amount of all other taxes paid by the said defendant upon the lot, piece, or parcel of land in controversy in this cause, and that the said complainant should
59 also pay to the said defendant interest at the rate of six per cent. per annum upon each of the aforesaid tax payments from the date thereof, and that the total payment to be made to the said complainant as a condition of relief herein amounts, principal and interest, on the first day of May, A. D. 1882, to the sum of one thousand one hundred and eighteen dollars ($1,118.00.)

It is therefore ordered, adjudged, and decreed, that if the said complainant do, within twenty days from the date of the entry of this decree, pay, or cause to be paid, to defendant's solicitor herein, for the use of the defendant, or in case of refusal by defendant's solicitir to accept the same, then to the clerk of this court for the use of defendant, the sum of one thousand one hundred and eighteen dollars ($1,118.00), with interest thereon at the rate of six (6) per cent. per annum from May 1, 1882, to the date of payment, then, and in that case, the alleged right, title, and interest of the said defendant, Asahel Gage, in and to the lot, piece, and parcel of land situated in the county of Cook, and State of Illinois, and known and described as lot six (6), in block fifty (50), Elston's addition to Chicago,
60 alleged to have been acquired by the said Asahel Gage by the payment of taxes aforesaid, and by tax deed to said premises issued to him on or about September 26, 1877, and by tax deed to said premises issued to him, dated February 4, 1880, shall be set aside and declared null and void as against the complainant, his heirs and assigns, as a cloud upon the title of the complainant, and the aforesaid deeds shall be set aside and declared null and void as against the complainant, his heirs and assigns, as a cloud upon the title of the complainant, and the defendant, Asahel Gage, shall deliver up the said deeds, to be canceled by the clerk of this court. It is further ordered that the complainant pay the costs of this suit, to be taxed by the clerk.

Afterwards, to wit, on the fifteenth day of May, in the adjourned May term of said court, A. D. 1882, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Decree.

HARMON PUMPELLY
vs.
ASAHEL GAGE. } In Chancery.

61 Now comes the complainant, Harmon Pumpelly, by Mason Brothers, his solicitors, and the defendant, Asahel Gage, also comes, by Augustus N. Gage, his solicitor, and the court being now fully advised in the premises, and finding that the said Augustus N. Gage declines to receive from the complainant the sum of one thousand one hundred and eighteen dollars, with interest thereon at the rate of six (6) per cent. per annum from the first day of May, A. D. 1882, to the date of payment, and the court also finding that the said complainant has thereupon, on this fifteenth day of May, A. D. 1882, caused to be paid to the clerk of this court for the use of said defendant the sum of elven hundred and twenty dollars and seventy-nine cents, and has also paid the costs of this suit, taxed by the clerk, and that the complainant has in all things complied with the orders and directions of this court, doth order, adjudge, and decree that the alleged right, title, and interest of the said defendant, Asahel Gage, in and to the lot, piece, and parcel of land situated in the county of Cook and State of Illinois, and known and described as lot six (6), in block fifty (60), Elston addition to Chicago,
62 alleged to have been acquired by the said Asahel Gage by the payment of taxes and by tax deed to said premises, issued to him on or about September 26, 1877, and by tax deed issued to him, dated February 4, 1880, be, and the same are hereby, set aside and declared null and void as against the complainant, his heirs and assigns, as a cloud upon the title of the complainant, and that the aforesaid deeds be, and the same are hereby, set aside and declared null and void as against the complainant, his heirs and assigns, as a cloud upon the title of the complainant, and that the defendant, Asahel Gage, do deliver up the said deeds to be canceled by the clerk of this court. And thereupon defendant prayed an appeal to the Supreme Court, which was objected to by complainant, on the ground that the value of the property in controversy does not exceed five thousand dollars; and said prayer for appeal is taken under advisement, with leave to either party to file affidavits by Friday next.

63 Afterwards, to wit, on the twenty-fourth day of May, in the adjourned May term of said court, A. D. 1882, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

HARMON PUMPELLY
vs.
ASAHEL GAGE. } In Chancery.

The court having considered the prayer of the defendant for appeal, heretofore entered herein, now allows the same, without preju-

dice to the right of the complainant to move to dismiss the same in the Supreme Court for want of jurisdiction, upon the defendant giving bond in the penal sum of three thousand dollars, with surety to be approved by the court within thirty days.

64 On the same day, to wit, on the twenty-fourth day of May, A. D. 1882, there was filed in said clerk's office an opinion of Judge Blodgett; which said opinion is in the words and figures following, to wit:

Opinion.

Circuit Court of the United States, Northern District of Illinois.

HARMON PUMPELLY *vs.* ASAHEL GAGE.

BLODGETT, J.:

The defendant has prayed an appeal in this case, which complainant resists, on the ground that the matter in dispute does not exceed $5,000, and affidavits have been filed on behalf of each party touching the value of the lands in controversy. I have considered these proofs, and am much inclined to hold that the fair cash value of this property does not exceed $5,000, although it is true that some of the affidavits on the part of defendant put the value much higher than that; but the affidavits on the part of the complainant refer to actual sales and transactions, which furnish a much more re-
65 liable basis of value than mere opinions or speculative conclusions; but I dislike, by any ruling of my own as to value, to deny an appeal to a party who seeks to review my findings upon the main question in a case. I shall therefore allow the appeal, with leave to the appellee to raise the question in the Supreme Court as to whether the amount in controversy is sufficient to enable defendant to prosecute an appeal; that is, I do not intend by the order allowing the appeal to cut off the right, if I could do so, of complainant to move in the Supreme Court to dismiss the appeal for want of jurisdiction.

H. W. BLODGETT, *Judge.*

(Endorsed:) Filed May 24, 1882. Wm. H. Bradley, clerk.

66 Afterwards, to wit, on the twentieth day of June, A. D. 1882, there was filed in said clerk's office an appeal bond in said entitled cause; which said appeal bond is in the words and figures following, to wit:

Appeal Bond.

U. S. Cir. Ct.

PUMPELLY *vs.* GAGE.

Know all men by these presents, that we, Asahel Gage and Henry H. Gage, are held and firmly bound unto Harmon Pumpelly in the full and just sum of three thousand (3,000) dollars, to be paid to the said Harmon Pumpelly, his certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made,

we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this twentieth day of June, A. D. 1882.

Whereas lately at a term of the circuit court of the United States for the northern district of the State of Illinois, in a suit pending in said court between Harmon Pumpelly, the complainant,
67 and Asahel Gage, the defendant, a decree was rendered in favor of said Harmon Pumpelly and against said Asahel Gage, and the said Asahel Gage having obtained an appeal to reverse said decree in the aforesaid suit, and a citation directed to said Harmon Pumpelly, citing and admonishing him to be and appear at a Supreme Court of the United States, to be held at Washington, on the second Monday of October next:

Now the conditions of the above obligation is such, that if the said Asahel Gage shall prosecute his said appeal to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain full force and virtue.

ASAHEL GAGE. [SEAL.]
HENRY H. GAGE. [SEAL.]

(Endorsed:) Approved. H. W. Blodgett, judge. Filed June 20, 1882. Wm. H. Bradley, clerk.

68 In the Circuit Court of the United States for the Northern District of Illinois.

HARMON PUMPELLY
vs.
ASAHEL GAGE. } General Number, 17141; term Number, 985.

Certificate of Evidence.

Be it remembered, that on the hearing of this cause the complainant, to maintain the issues on his part, introduced the master's report of testimony taken before him, and the documentary evidence referred to by the master in said report; and the defendant, to maintain the issues upon his part, also introduced said master's report and documentary evidence referred to in said master's report; which said master's report and documentary evidence therein referred to are in words and figures as follows, to wit:

Master's Report.

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

HARMON PUMPELLY, Complainant,
vs.
ASAHEL GAGE, Defendant.

To the honorable the judges of the said court:

The above-entitled cause having been referred to me as master in chancery of the said court, by an order of the said court entered

herein on the eighteenth (18th) day of October, A. D. 1880,
69 to take proofs herein and report the same to the court, I do hereby report that, having notified the parties interested that a hearing for the purposes in the said order expressed would be had before me at my office, in Chicago, on the 27th day of October, A. D. 1880, I was attended on that day by A. B. Mason, Esquire, of the firm of Mattocks and Mason, of counsel for said complainant, and also by A. N. Gage, Esquire, of counsel for defendant, and also by Walter Mattocks, who testified herein on behalf of the said complainant, and whose testimony was duly taken, is hereto annexed and made a part hereof. I was again attended, by adjournment, on the 5th, 19th, and 26th days of November, A. D. 1880, by said respective counsel, and also by Theodore T. Gurney, George Taylor, and Mary Glasby, and Frank Glasby, who testified herein on behalf of the said complainant. I return herewith all the aforesaid testimony and the documents produced by said counsel.

All of which is respectfully submitted.

H. W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

Dated Chicago, March 3d, 1881.

Testimony taken before Henry W. Bishop, master in chancery of said court.

WEDNESDAY, *the 27th day of October, A. D.* 1880.

Present: Mr. Mason for complainant; Mr. H. H. Gage for defendant.

WALTER MATTOCKS, a witness on behalf of the complainant,
70 being first duly sworn, was examined in chief by Mr. MASON, and deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.

Ans. Walter Mattocks; age, 24; residence, Chicago; lawyer.

Q. Are you acquainted with lot 6, block 50, Elston's addition to Chicago?

A. Yes, sir.

Q. Do you know who is in possession of the property?

A. Yes, sir.

Q. Who?

A. Harmon Pumpelly.

Q. The complainant in this case?

A. Yes, sir.

Q. How did he obtain possession?

(Objected to.)

Q. How is he in possession of the property?

A. He is in occupation by virtually being the landlord of the tenant who is in actual possession.

Q. A tenant there under a lease?

A. Yes, sir.

Q. Can you produce the lease?

A. Yes, sir.

(Lease produced.)

Counsel for complainant offers in evidence as Exhibit A the master's deed.

(Objected to.)

As Exhibit B the lease produced by the witness.

(Objected to.)

Q. Do you know who was in occupation of the property prior to the execution of this deed?

A. I do. A man by the name of H. Glasby.

Q. State, if you know, the circumstances of his leaving the property.

(Objected to.)

71 A. He was ousted by the receiver in the case of Pumpelly *vs.* Arstrong, under an order of the United States court.

Q. Mr. Pumpelly obtained possession of the property subsequent to that?

A. He did.

Q. Under the master's deed?

A. Under the master's deed possession was delivered to him by the receiver.

Cross-examination by Mr. GAGE:

Q. What is the whole title of the case that you refer to?

A. Harmon Pumpelly *vs.* Thomas Armstrong and others.

Q. Can you give the number of them?

A. Not without reference to the files.

Q. Was Asahel Gage a party to that suit?

A. I cannot state without reference to the files.

Counsel for complainant offers in evidence, as Exhibit C, the files and records in the case of Harmon Pumpelly *v.* Thomas Armstrong and others.

[This withdrawn as per stipulation, and trust deed, Armstrong to Scott, use Pumpelly, on file in this case, substituted as Exhibit C.]

(Objected to.)

As Exhibit D, the constitution of the State of Illinois.

Objected to.

As Exhibit E, certified copy of deed from Armstrong and wife to Mrs. Bracken.

Objected to.

As Exhibit F, certified copy of proofs made before the county clerk in behalf of Asahel Gage.

Objected to.

As Exhibit G, certificate of the county clerk as to the assessed valuation of the city of Chicago for 1875.

Objected to.

72 As Exhibit H, certified copy of appropriation ordinance of the city of Chicago for 1875.

Objected to.

FRIDAY, *the 5th day of November, A. D.* 1880.

Present as before.

THEODORE T. GURNEY, a witness for complainant, being first duly sworn, was examined in chief by Mr. MASON, and deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.
Ans. Theodore T. Gurney; 60 years of age; residence, Chicago.
Q. What is your occupation?
A. Comptroller of the city of Chicago.
Q. You are the general financial officer of the city?
A. I am.
Q. Will you state the amount of the bonded debt of the city of Chicago during the year 1875?

(Objected to, because the question is incompetent and irrelevant, and the matters sought to be proved by such questions have been passed upon by the county court, and thereby become *res adjudicata.*)

A. The total bonded indebtedness of the city of Chicago, December 31, 1875, was $13,457,000. There is a discrepancy with the previous report. They changed the fiscal year in 1875, and made it from December to December, whereas before it was from April to April. In making up the indebtness April, 1875, it was made $13,456,000, being a discrepancy of a thousand dollars in the bonded indebtedness of the city, which came from the fact that one of the
73 bonds had been cancelled—it was found after the fire—without authority, and had not been paid. I state this so that if any question should arise at the trial you might be able to understand it.

Cross-examination by Mr. GAGE:

Q. How do you know the bonded indebtedness of the city of Chicago?
A. By their books; this is the report made by the comptroller at that time; Mr. Hayes, I think it was.
Q. Do you give these figures from the reports that you mention?
A. I give these figures from the ledger. I have compared them with the ledger before I came over here.

Mr. MASON:

Q. It is part of your business as comptroller to pay the interest, or see that the interest is paid on the bonds?
A. Yes, sir.
Q. You would know, would you not, from your experience as

comptroller, whether there were any errors in the statement you have made?

A. I think I would.

GEORGE TAYLOR, a witness on behalf of complainant, being first duly sworn, was examined in chief by Mr. MASON, and deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.

Ans. George Taylor; lawful age; residence, Chicago.

Q. Do you know Mr. Ira Scott and Frank C. Taylor and Harmon Pumpelly?

74 A. Yes, sir.

Q. What were the residences of Mr. Scott and Mr. Taylor from 1873 to 1878; what State and county did they live in?

(Objected to as immaterial.)

A. Cook county, Illinois.

Q. That is the county in which the city of Chicago is situated?

A. Yes, sir.

Q. Did either or both of them have offices in the city of Chicago?

A. They both had offices in Chicago.

Q. You say you have seen Mr. Pumpelly?

A. I have met him; seen him.

Q. Known of correspondence?

A. I have known of correspondence with him.

Q. About how long ago?

A. About seven years ago.

Q. State what his residence has been.

A. Albany, N. Y.

Cross-examination by Mr. GAGE:

Q. Do you know what his business is?

A. I do not.

Q. Do you know whether he has any business in Albany?

A. I do not.

Q. Do you know whether he is connected with any banking institution in Albany?

A. I do not.

Exhibits A, B, and C, heretofore offered, are withdrawn under the stipulation, and counsel for complainant offers as Exhibit A the original trust deed of Thomas Armstrong to Ira Scott, F. C. Taylor, successor in trust, for the use of Harmon Pumpelly, now part

75 of the records of this court in the case of Pumpelly *vs.* Armstrong.

Counsel for complainant offers in evidence as Exhibits B and C certified records of the county of Cook, showing as Exhibit B the appropriation ordinance of said county for the year 1873, and as Exhibit C the pay-rolls of the county commissioners for that year.

Objected to, first, because they are not complete; and, secondly, the matters endeavored to be proved by these exhibits are matters which appear to have been passed upon by the county court, and, for

the purposes for which they are used, are conclusive upon these complainants, and *res adjudicata*, becoming so by the judgment of the county court, and that they are otherwise incompetent, irrelevant, and insufficient.

Adjourned to 10 a. m. Tuesday, Nov. 9, 1880.

Adjourned, by consent, to 11 a. m. of Friday, November 19th, 1880.

76 FRIDAY, *the 19th day of November, A. D.* 1880.

Present: Mattocks & Mason, solicitors for complainant, and A. N. Gage, defendant's solicitor.

MARY GLASBY, a witness for the complainants, being duly sworn, was examined in chief by Mr. MASON, and deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.

Ans. Mary Glasby; I guess I am fifty-one or fifty-two years old; I live on the corner of Blackhawk and North Branch streets.

Q. Have you moved recently?

A. Yes; we moved lately; we moved about two or three months ago.

Q. Where were you living before that?

A. We lived in — place since three years last September, and we built a little house there; we were in his own house that he moved on there before that, and my boy was driving team for him, and he didn't want him to go away, and so we were going to rent rooms down town, and he wouldn't let us go away; he said he would give us a place for a house, and if we wanted to plant anything there, for $30 a month; and he went away himself; I gave him a little rent; I didn't give him much, and after he went away my husband done chores for the old lady, and she stopped here for about a year, and my husband fixed the fence, and tended the garden, and done little chores; we didn't pay any more rent after he went away, only what work he done.

Q. Was this in Elston's addition where you were living?

77 A. I couldn't tell which place it was. It was in the part of his property back where he used to have his dock, near the river.

Q. Near the river; what street was opposite it?

A. The river on the back part of it and Cherry avenue in front of it.

Q. How near to the side street was it?

A. Black Hawk street was the one next to it, and there was no other street until North avenue, at the North branch.

Q. When did you go on the property?

A. Three years ago last August since we went in the house, and then September we built our own little house and moved in it.

Q. You occupied a house on those premises?

A. His house?

Q. Yes.

A. We did for a month.

Q. And then you built a house of your own?
A. And then we built a little house of our own, the one we have now.
Q. Then you lived there until two or three months ago?
A. Yes, sir, until to July; we were there before the fourth of July.

Mr. GAGE:

Q. Where do you live now?
A. I live on the corner of Blackhawk and North Branch street, up near the river.

FRANK GLASBY was sworn, examined by Mr. MASON. and testified as follows:

Q. What is your name?
A. Frank Glasby.
78 Q. Your age?
A. Twenty-two years, past.
Q. Are you related to Mrs. Glasby, the first witness?
A. Yes, sir; I am her son.
Q. Have you heard her testimony in this case?
A. Yes, sir.
Q. And you know that it is true of your knowledge?
A. Yes, sir.
Q. And you have lived with her during this time?
A. Yes, sir; I lived all the time there.
Q. On the premises she mentioned?
A. Yes, sir.

Mr. GAGE:

Q. Where do you reside now, Mr. Glasby?
A. Corner of Blackhawk and North and North Branch.
Q. Which corner?
A. On the northwest corner.

WALTER MATTOCKS was recalled by Mr. MASON, and testified as follows:

Q. Mr. Mattocks, will you examine the paper I now hand you and state what it is?
A. It is a lease executed by Harmon Pumpelly to Frederick Edler.
Q. To what property?
A. Lots five and six, block fifty, Elston's Addition to Chicago.

Lease offered in evidence as Ex. L.

Q. Are you acquainted with the property?
A. I am.
Q. Will you state whether or not it is the same property that Mrs. Glasby has described?
A. It is.
79 Q. Have you served as receiver for that property?

A. I have; yes, sir.
Q. Did you find Mrs. Glasby on it as such receiver?
A. I did.
Q. This is the property she has described herself as occupying?
A. It is.

Mr. MASON: We offer in evidence as Ex. I certified copy of the debt account with the city of Chicago.

Mr. GAGE: I will reserve my exception until you have introduced all you propose to on that subject to save duplicating exceptions.

Mr. MASON: We offer as Ex. J copy of the levy ordinance of 1875 of the city of Chicago, certified by the county clerk, with a certificate of extension.

We offer as Ex. K certified copies by the clerk of the county court of Cook county showing equalized valuation of Cook county for 1873, and the taxes for 1873 and 1875, as extended against lot six, in block fifty, for those years, and the city appropriation ordinance of 1875, certified by the county clerk.

Adjourned till eleven o'clock a. m., November 26, 1880.

80 FRIDAY, *the 26th day of November, A. D.* 1880.

Present as before.

Mr. GAGE: I wish to object to the exhibits of the complainant, as follows: Exhibit B and C, that they are not copies, but are incomplete and partial, and that the matters and things endeavored to be shown by the exhibits are such matters as have become conclusive by operation of the judgment of the county court of Cook county.

As to Exhibit E, that it is incomplete, and no foundation laid whatever for its introduction.

As to Exhibits G, H, I, J, and K, that they are each incomplete, inaccurate, and insufficient, and that Exhibits H, I, J, and K, are not copies, but are incomplete, inaccurate, and partial, and that the matters and things sought to be shown by all of said exhibits are matters passed upon by the county court of Cook county, and are conclusive.

For the defendant, I will introduce in evidence a certified copy made by the county clerk of Cook county of the Cook county delinquent tax list as advertised in the Inter-Ocean from the 24th day of July, A. D. 1874, by the county treasurer, and *ex-officio* collector of the revenue of Cook county, Illinois; also the county collector's delinquent list, the records and judgments of the county court of Cook county, Illinois, the judgment records, the precept and record of sale for the State, county, and other taxes for the year 1873, and prior years, and the certificate of sale, and notices and affidavits upon which the deed was issued, so far as the same relates to the property described in the foregoing copy, (marked Exhibit 1, Gage.)

81 I will next offer in evidence the tax deed executed by Hermann Lieb, county clerk, on the 6th day of September, A. D. 1877, upon the sale mentioned in the foregoing copy, that is to lot 6, block 50, Elston's Addition to Chicago, to which deed is attached an acknowledgement thereof upon the 6th day of September,

A. D. 1877, and also a certificate of the recorder that the same was recorded in the recorder's office of Cook county the 7th day of September, A. D. 1877, book 777 of records, page 19, (marked Exhibit 2, Gage.)

I will next offer in evidence a certified copy, made by the county clerk of Cook county, of the county delinquent tax list, as advertised in the Inter-Ocean on the 18th day of May, 1877, by the county treasurer and *ex-officio* collector of the revenue of Cook county, Illinois, and of the certificate of the publisher of said Inter-Ocean thereto attached. Also, the county collector's delinquent list, the orders and judgments of the county court of Cook county, Illinois; the judgment record, the precept and record of sales of the State, county, and other taxes for the year 1876 and prior years, and the certificate of sale and notice and affidavits upon which deed was issued, so far as sale relates to the property described in the foregoing property, (marked Exhibit 3, Gage.)

I will next offer in evidence a certified copy, made by the county clerk of Cook county, of a certain notice of sale for taxes as published in the Chicago Daily Evening Journal, together with the publisher's certification of publication thereto attached, so far as the same relates to the land and premises therein mentioned and described; that said notice was filed in his office by Asahel Gage, on the 3d day of
82 February, A. D. 1880, and duly recorded in his office, as required by law, (marked Exhibit 4, Gage.)

I will next offer in evidence a tax deed executed by E. F. C. Klokke, county clerk of Cook county, on the 4th day of February, A. D. 1880, conveying lot 6, in resubdivision of block 50, in Elston's Addition to Chicago, which has attached an acknowledgement dated upon said 4th day of February, A. D. 1880, and, also, the certificate of the recorder of Cook county that the same was recorded on the 7th day of February, A. D. 1880, in book 975 of records, at page 198, (marked Exhibit 5, Gage.)

Defendant wishes now, after the production of the evidence on his part of the judgments, precepts, deeds, etc., to renew his objection to the evidence introduced by the complaint, so far as the same in any way relates to those matters passed upon by the county court of Cook county in such judgments.

Complainant reserves the right to object hereafter to defendant's exhibits.

(Endorsed:) Filed March 4th, 1881. W. H. Bradley, clerk.

83 EXHIBIT A.

Deed of Trust.

This indenture, made this fourth day of August, in the year of our Lord one thousand eight hundred and seventy-one (A. D. 1871), between Thomas Armstrong and Sarah, his wife, of the city of Chicago, in the county of Cook and State of Illinois, party of the first part, and Ira Scott, of the same place, party of the second part, witnesseth: That whereas the said Thomas Armstrong has this day exe-

cuted his certain promissory note, bearing even date herewith, for the sum of five thousand dollars, payable to the order of H. Pumpelly, at the New York State National Bank, of Albany, N. Y., in eight years after date. The interest on said note until the maturity thereof, at the rate of nine per cent. per annum, being secured, to be paid semi-annually on the fourth day of the months of February and August, in each and every year, by sixteen coupons attached thereto, each for the sum of two hundred and twenty-five dollars ($225.00.)

The said note and the coupons thereunto attached to carry interest after maturity at the rate of ten per cent. per annum.

(Stamp $5.00 cancelled.)

And whereas the said party of the first part are desirous of securing not only the prompt payment of said promissory note above mentioned, and the interest thereon, but also of effectually securing and indemnifying the said H. Pumpelly or his legal representative, for or on account of any assignment, endorsement, guaranty, or transfer of said promissory note. Now, therefore, the said party of the first part, in consideration of the premises, and for the
84 purposes aforesaid, and in the further consideration of the sum of one dollar to them in hand paid, by said party of the second part, the receipt whereof is hereby confessed and acknowledge, have and do hereby grant, bargain, sell, and convey unto the said party of the second part, his heirs, assigns, or successors in trust forever, all the premises situate in the city of Chicago, in the county of Cook and State of Illinois, known and described as the twenty feet south of the boundary line dividing lots numbers one (1) and two (2), having a frontage westerly on Sedgwick street of twenty (20) feet, and easterly on the Littlefort road (now Lincoln avenue) of twenty (20) feet, and being a strip of land twenty (20) feet in width, running the whole length of said lot number two (2) from Sedgwick street on the west to the Littlefort road (now Lincoln avenue) on the east, and being always parallel with and twenty (20) feet distant from the aforesaid boundary line dividing said lots numbers one (1) and two (2). Said premises being located in Armstrong's sub-division of the north three acres of block number thirty-nine (39) in the canal trustees' subdivision of the north half, the north half of the southeast quarter, and east half of the southwest quarter of section number thirty-three (33), township number forty (40) north, of range number fourteen (14) east of the third principal meridian, according to a plan of said subdivision recorded in the recorder's office of Cook county, Illinois, in book 163 of maps, page 90, to have and to hold the same, together with all and singular the privileges and appurtenances thereunto belonging. In trust nevertheless, that in case of default in payment of the said
85 promissory note, or the interest thereon, or any part thereof, according to the true meaning, tenor, and effect of the said promissory note, then, on the application of the legal holder of the said promissory note, it shall and may be lawful for the said party of the second part, his heirs, assigns, or successors in trust, either in per-

son or by attorney, to sell and dispose of the said property or premises herein described, and all the right, title, benefit, and equity of redemption of the said party of the first part, their heirs or assigns therein, at public auction, at the north door of the court-house, in the city of Chicago, in the county of Cook, and State of Illinois, to the highest bidder or bidders, for cash, first giving notice of the time and place of such sale by publishing such notice in one of the newspapers at that time published in said city of Chicago by ten daily publications in such paper, the last of which shall be at least thirty days before such sale, which sale may be adjourned from time to time as may by said party of the second part, his heirs, assigns, or successors in trust, be thought expedient, by public proclamation, or otherwise, (personal notice to said party of the first part of such sale or adjournment of sale being hereby expressly waived.) And said party of the second part is hereby fully authorized to make, execute, and deliver to the purchaser or purchasers at such sale or adjourned sale good and sufficient deed or deeds of conveyance for the premises sold, and out of the proceeds of such sale, after first paying all costs of advertising and sale, commissions, and other expenses of this trust, including all money
86 advanced for insurance, taxes, assessments, or liens of any kind on said premises, with interest thereon at ten per cent. per annum, to pay the amount which shall by said promissory note appear to remain unpaid at the time of such sale, rendering the overplus (if any) unto the said party of the first part, their legal representatives or assigns, on reasonable request, and it shall not be obligatory upon the purchaser or purchasers at any such sale to see to the application of the purchase money; which sale or sales so made shall be a perpetual bar, both in law and equity, against the said party of the first part, their heirs and assigns, and all other persons claiming the premises aforesaid, or any part thereof, by, from, through, or under said party of the first part, or any of them.

And the said party of the first part, for themselves, their heirs, executors, administrators, and assigns, do further covenant and agree that they will pay or cause to be paid all taxes and assessments which may be levied or assessed on said premises, or any part thereof while said promissory note remains unpaid; and if, in consequence of their neglect to pay said taxes or assessments, the said premises, or any part thereof, shall be advertised for sale for the tax or assessment due thereon, it shall and may be lawful for the said party of the second part, or his attorney, or the legal owner or holder of said promissory note, at his option, at any time, to pay and discharge said tax or assessment or to redeem the said premises, or any part thereof, which have or may be sold at any tax sale for taxes or assessments due or to become due thereon,
87 or to purchase any outstanding title acquired by any deed or tax certificate arising from any past or future tax sale of said premises, or any part thereof, on such terms as he may deem advisable, without notice to the said party of the first part, and the amount of money so paid shall, with interest at the rate of ten per cent. per annum in addition thereto, be added to the payment

which shall next thereafter become due on said promissory note, and shall also constitute an additional indebtedness from the said party of the first part, which this deed is given to secure.

And it is stipulated and agreed that in case of default in any of said payments of principal or interest, as aforesaid, or of a breach in any of the covenants or agreements herein contained, then, and in that case, the whole principal sum hereby secured, and the interest thereon, according to the tenor and effect of said promissory note, to the time of such sale, shall, at the option (without notice thereof to said party of the first part, their heirs, assigns, or legal representatives) of the legal holder or holders of said promissory note, become at once due and payable, and the premises hereby conveyed may be sold in like manner, and with the same effect as if the said indebtedness had fully matured. And it is further agreed by the parties hereto, that on making sale as above provided for, said party of the second part may sell the premises, either in parcels or altogether, as he may see fit; that all the acts and trusts which he is by these presents empowered to perform and execute, he may perform and execute as well by attorney as in person, and that in case said
88 party of the second part, either in person or by his attorney, shall hereafter execute any deed, conveyance, or instrument in writing, which purports to be executed in pursuance of the provisions of this deed, such deed or instrument of writing shall be *prima facie* evidence that the same was properly and lawfully made by said party of the second part in pursuance of the powers hereby granted. And the said party of the first part, for themselves, their heirs, executors, or administrators, further covenant and agree that until they shall well and truly pay, or cause to be paid to the said H. Pumpelly, his heirs, executors, administrators, or assigns, the aforesaid sum of money, with interest thereon as aforesaid, at the time and in the manner specified in said promissory note, according to the true intent and meaning thereof, they will keep the buildings standing on said premises *insured against fire* in a sum not less than four thousand dollars in such insurance company, or companies, as the said party of the second part, or his successor in trust, shall approve, and the policy or policies therefor assigned to said party of the second part, or his successor in trust, for the benefit of the said H. Pumpelly, his legal representatives or assigns. And the said Thomas Armstrong and Sarah, his wife, party of the first part, hereby expressly waive and release any and all right, benefit, privilege, advantage, and exemption under or by virtue of any and all statutes of the State of Illinois providing for the exemption of homesteads from sale on execution or otherwise, and especially under the act entitled "An act to exempt homesteads from sale on execution."
89 passed by the General Assembly of the State of Illinois A. D. 1851, and approved February 11, 1851, and an act entitled "An act to amend 'An act to exempt homesteads from sale on execution,'" passed by said assembly A. D. 1857, and approved February 17, A. D. 1857. And the said Thomas Armstrong, for himself, his heirs, executors, and administrators, covenants and agrees to and with the said party of the second part, his legal representatives or

successor in trust, that at the time of the ensealing and delivery of these presents he is well seized of said premises in fee simple, and has good right, full power, and lawful authority to grant, bargain, and sell the same in manner and form aforesaid, and that the same are free and clear from all liens and encumbrances whatever, (except as herein specified.) And it is further agreed and especially understood, that in case of the death, resignation, removal from the said city of Chicago, or other inability to act, of said party of the second part, then Frank C. Taylor, of the said city of Chicago, shall be, and hereby is, appointed and made the successor in trust herein, with like power and authority as the said party of the secoond part, and the premises shall become vested in such new trustee accordingly.

In witness whereof, the said party of the first part have hereunto set their hands and seals and affixed the required stamp, the day and year first above written.

THOMAS ARMSTRONG. [L. S.]
SARAH x ARMSTRONG. [L. S.]

90 STATE OF ILLINOIS, }
County of Cook, City of Chicago, } ss:

I, Francis A. Hoffman, Jr., a notary public in and for and residing in said city of Chicago, in said county, in the State of aforesaid, do hereby certify that Thomas Armstrong, and Sarah his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing deed as having executed the same, appeared before me this day in person, and acknowledged that they signed, sealed, and delivered the same instruments of writing as their free and voluntary act for the uses and purposes therein set forth, and thereby conveyed all their right, title, and interest in and to the premises described in said deed, and expressly waived and released all right, claim, benefit, privilege, advantage, and exemption under any and all "homestead exemption laws," so called, of the State of Illinois. And the said Sarah, wife of the said Thomas Armstrong, having been by me examined separate and apart and out of the hearing of her husband, and the contents and meaning of the said deed, and also her rights and benefits under the "homestead exemption laws," so called, of the State of Illinois, having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same, and relinquished all her dower, and all right, title, and interest in and two the lands and tenements therein mentioned, and expressly waived and released all right, claim, benefit, privileage, advantage, and
91 exemption, under any and all "homestead exemption laws," so called, of the State of Illinois, without the compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and notarial seal, this 29th day of August, in the year of our Lord one thousand eight hundred and seventy-one.

[SEAL.] FRANCIS A. HOFFMANN, JR.,
Notary Public.

(Endorsed:) No. 111,268. Filed, for record in the recorder's office

of Cook county, August 31, A. D. 1871, and recorded in book 675 of deeds, page 251.

NORMAN T. GASSETTE, *Recorder.*

STATE OF ILLINOIS, } ss. 17827.
Cook County, }

Refiled for record Mar. 13, A. D. 1872, at — o'clock —. m., & recorded, book 67 of deeds, page 89. Norman T. Gassette, recorder.

92 & 3 *Deed of Trust.*

This indenture, made this fourth day of August, in the year of our Lord one thousand eight hundred and seventy-one (A. D. 1871), between Thomas Armstrong and Sarah Armstrong, his wife, of the city of Chicago, in the county of Cook, and State of Illinois, party of the first part, and Ira Scott, of the same place, party of the second part, witnesseth: That whereas the said Thomas Armstrong has this day executed his certain promissory note, bearing even date herewith, for the sum of five thousand dollars, payable to the order of H. Pumpelly, at the New York State National Bank, of Albany, N. Y., in eight years after date, the interest on said note, until the maturity thereof, at the rate of nine per centum per annum, being secured, to be paid semi-annually on the fourth day of the months of February and August in each and every year, by sixteen coupons attached thereto, each for the sum of two hundred and twenty-five dollars ($225), the said note and the coupons thereunto attached to carry interest after maturity at the rate of ten per centum per annum.

(Five-dollar revenue stamp, cancelled.)

And whereas the said party of the first part are desirous of securing not only the prompt payment of said promissory note above mentioned and the interest thereon, but also of effectually securing and indemnifying the said H. Pumpelly, or his legal representative, for or on account of any assignment, endorsement, guaranty, or transfer of said promissory note:

Now, therefore, the said party of the first part, in con-
94 sideration of the premises, and for the purposes aforesaid, and in the further consideration of the sum of one dollar, to them in hand paid by said party of the second part, the receipt whereof is hereby confessed and acknowledged, have and do hereby grant, bargain, sell, and convey unto the said party of the second part, his heirs, assigns, or successors in trust forever, all the premises situate in the city of Chicago, in the county of Cook, and State of Illinois, known and described as the five and four-tenths ($5\frac{4}{10}$ths) feet of lot number two (2), lying north of the boundary line between lots numbers two and three, and the fourteen and a half ($14\frac{1}{2}$) feet of lot number three, lying immediately south of the said boundary line, said pieces of land having a frontage together of nineteen feet and eight inches (19 ft. 8 ins.) on Sedgwick street on the west, and nineteen feet and eight inches (19 ft. 8 ins.) on the Littlefort road (now Lincoln avenue) on the east, and being a strip of land nineteen feet and eight inches (19 feet 8 ins.) in width, running parallel with the

said boundary line, and throughout the whole length of said lots, and being always distant from said boundary line on the north five and $\frac{4}{10}$ feet ($5\frac{4}{10}$ ft.), and on the south thereof fourteen and one-half feet ($14\frac{1}{2}$ ft.) in Armstrong's subdivision of the north three acres of block number thirty-nine (39), in the canal trustees' subdivision of the north half, the north half of the southeast quarter, and east half of the southwest quarter of section number thirty-three (33), township number forty (40) north, of range number fourteen east, of the third principal meridian, according to a plan of said division,
95 recorded in the recorder's office of Cook county, Illinois, in book 163 of maps, page 90; to have and to hold the same, together with all and singular the privileges and appurtenances thereto belonging, in trust, nevertheless, that in case of default in the payment of the said promissory note or the interest thereon, or any part thereof, according to the true meaning, tenor, and effect of the said promissory note, then, on the application of the legal holder of the said promissory note, it shall and may be lawful for the said party of the second part, his heirs, assigns, or successors in trust, either in person or by attorney, to sell and dispose of the said property or premises herein described, and all the right, title, benefit, and equity of redemption of the said party of the first part, their heirs or assigns therein, at public auction, at the north door of the courthouse, in the city of Chicago, in the county of Cook and State of Illinois, to the highest bidder or bidders, for cash, first giving notice of the time and place of such sale, by publishing such notice in one of the newspapers at that time published in said city of Chicago, by ten daily publications in such paper, the last of which shall be at least thirty days before such sale, which sale may be adjourned from time to time, as may by said party of the second part, his heirs, assigns, or successors in trust, be thought expedient, by public proclamation or otherwise, (personal notice to said party of the first part of such sale or adjournment of sale being hereby expressly waived;) and said party of the second part is hereby fully authorized to make, execute, and deliver to the purchaser or purchasers
96 at such sale or adjourned sale, good and sufficient deed or deeds of conveyance for the premises sold, and out of the proceeds of such sale, after first paying all costs of advertising and sale, commissions, and other expenses of this trust, including all money advanced for insurance, taxes, assessments, or liens of any kind on said premises, with interest thereon at ten per cent. per annum, to pay the amount which shall by said promissory note appear to remain unpaid at the time of such sale, rendering the overplus (if any) unto the said party of the first part, their legal representatives or assigns, on reasonable request; and it shall not be obligatory upon the purchaser or purchasers at any such sale to see to the application of the purchase-money, which sale or sales so made shall be a perpetual bar, both in law and equity, against the said party of the first part, their heirs and assigns, and all other persons claiming the premises aforesaid or any part thereof, by, from, through, or under said party of the first part or any of them.

And the said party of the first part, for themselves, their heirs,

executors, administrators, and assigns, do further covenant and agree that they will pay, or cause to be paid, all taxes and assessments which may be levied or assessed on said premises, or any part thereof, while said promissory note remains unpaid, and if, in consequence of their neglect to pay said taxes or assessments, the said premises, or any part thereof, shall be advertised for sale for the tax or assessment due thereon, it shall and may be lawful for the said party of the second part, or his attorney, or the legal owner or holder
97 of said promissory note, at his option, at any time, to pay and discharge said tax or assessment, or to redeem the said premises, or any part thereof, which have or may be sold at any tax sale for taxes or assessments due or to become due thereon, or to purchase any outstanding title acquired by any deed or tax certificate arising from any past or future tax sale of said premises, or any part thereof, on such terms as he may deem advisable, without notice to the said party of the first part, and the amount of money so paid shall, with interest at the rate of ten per cent. per annum in addition thereto, be added to the payment which shall next thereafter become due on said promissory note, and shall also constitute an additional indebtedness from the said party of the first part, which this deed is given to secure. And it is stipulated and agreed that in case of default in any of said payments of principal or interest as aforesaid, or of a breach in any of the covenants or agreements herein contained, then and in that case the whole principal sum hereby secured, and the interest thereon, according to the tenor and effect of said promissory note to the time of such sale, shall, at the option (without notice thereof to said party of the first part, their heirs, assigns, or legal representatives) of the legal holder or holders of said promissory note, become at once due and payable, and the premises hereby conveyed may be sold in like manner and with the same effect as if the said indebtedness had fully matured.

And it is further agreed by the parties hereto that, on making sale as above provided for, said party of the second part may sell the premises, either in parcels or altogether, as he may
98 see fit; that all the acts and trusts which he is by these presents empowered to perform and execute he may peform and execute as well by attorney as in person; and that in case said party of the second part, either in person or by his attorney, shall hereafter execute any deed, conveyance, or instrument in writing, which purports to be executed in pursuance of the provisions of this deed, such deed or instrument of writing shall be *prima facie* evidence that the same was properly and lawfully made by said party of the second part, in pursuance of the powers hereby granted. And the said party of the first part, for themselves, their heirs, executors, or administrators, further covenant and agree that until they shall well and truly pay or cause to be paid to the said H. Pumpelly, his heirs, executors, administrators, or assigns, the aforesaid sum of money, with interest thereon, as aforesaid, at the time and in the manner specified in said promissory note, according to the true intent and meaning thereof, they will keep the buildings standing on said premises insured against fire, in a sum not less than four thou-

sand dollars, in such insurance company or companies as the said party of the second part or his successor in trust shall approve, and the policy or policies therefor assigned to said party of the second part or his successor in trust for the benefit of the said H. Pumpelly, his legal representatives or assigns. And the said Thomas Armstrong and Sarah Armstrong, his wife, party of the first part, hereby expressly waive and release any and all right, benefit, privilege, advantage, and exemption, under or by virtue of any and all
99 statutes of the State of Illinois providing for the exemption of homesteads from sale on execution or otherwise, and especially under the act entitled "An act to exempt homesteads from sale on execution," passed by the General Assembly of the State of Illinois, A. D. 1851, and approved February 11, A. D. 1851, and an act entitled "An act to amend 'An act to exempt homesteads from sale on execution,'" passed by said Assembly A. D. 1857, and approved February 17, 1857. And the said Thomas Armstrong, for himself, his heirs, executors, and administrators, covenants and agrees to and with the said party of the second part, his legal representatives or successor in trust, that at the time of the ensealing and delivery of these presents he is well seized of said premises in fee simple, and has good right, full power, and lawful authority to grant, bargain, and sell the same in manner and form aforesaid, and that the same are free and clear from all liens and incumbrances whatever, (except as herein specified.) And it is further agreed and especially understood, that in case of the death, resignation, removal from the said city of Chicago, or other inability to act of said party of the second part, then Frank C. Taylor of the said city of Chicago shall be, and hereby is, appointed and made the successor in trust herein, with like power and authority as the said party of the second part, and the premises shall become vested in such new trustee accordingly.

In witness whereof the said party of the first part have hereunto set their hands and seals, and affixed the required stamp, the day and year first above written.

THOMAS ARMSTRONG. [L. S.]
SARAH x ARMSTRONG. [L. S.]

100 STATE OF ILLINOIS, }
County of Cook, City of Chicago, } ss:

I, Francis A. Hoffmann, Jr., a notary public in and for and residing in said city of Chicago, in said county, in the State aforesaid, do hereby certify that Thomas Armstrong and Sarah Armstrong, his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing deed as having executed the same, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the same instrument of writing as their free and voluntary act for the uses and purposes therein set forth, and thereby conveyed all their right, title, and interest in and to the premises described in said deed, and expressly waived and released all right, claim, benefit, privilege, advantage, and exemption under any and all "homestead exemption laws," so called, of the State of Illinois. And the said Sarah Armstrong, wife of the said

Thomas Armstrong, having been by me examined separate and apart, and out of the hearing of her husband, and the contents and meaning of the said deed, and also her rights and benefits under the "homestead exemption laws," so called, of the State of Illinois, having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same, and relinquished all her dower and all right, title, and interest in and to the lands and tenements therein mentioned, and ex-
101 pressly waived and released all right, claim, benefit, privilege, advantage, and exemption under any and all "homestead exemption laws," so called, of the State of Illinois, without the compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and notarial seal, this 29th day of August, in the year of our Lord one thousand eight hundred and seventy-one.

[SEAL.] FRANCIS A. HOFFMANN, JR.,
Notary Public.

(Endorsed:) No. 111,269. Filed for record in the recorder's office of Cook county, Aug. 31, A. D. 1871, and recorded in book 675 of Deeds, page 255.

NORMAN T. GASSETTE, *Recorder.*

STATE OF ILLINOIS, } *ss.:* 17,825.
Cook County, }

Refiled for record Mar. 13, A. D. 1872, at —— o'clock —— m., and recorded in book 68 of Record, page 6.

NORMAN T. GASSETTE, *Recorder.*

102 EXHIBITS B AND C.

The following pay-roll was presented and read:

Names.	Regular session.	Com. time.		No. of miles.	Ex'p.	Amount.
		Regular.	Special.			
John Jones	19	47	3	------	------	345 00
Joseph Harris	17	45	------	------	20 00	330 00
John Herting	19	45	5	------	------	345 00
J. H. Pahlman	18	17	------	1,890	------	269 50
Thomas Lonergan	19	45	4	------	------	340 00
John Crawford	18	42	6	816	------	370 80
J. J. Russell	19	15	6	1,760	------	288 00
S. Ashton	19	51	5	------	65 00	440 00
Total	------	------	------	------	------	$2,728 30

On motion of Com'r Ashton, the same ordered paid by the following vote, 5 x 3:

Yeas.	*Yeas.*	*Nays.*
Ashton,	Lonergan,	Bogue,
Harris,	Pahlman.	Claugh,
Herting.		Singer.

103 *Pay-Roll.*

Names.	Time.	No. of days.	Committee time.	No. of miles.	Exp.	Amounts.
Thomas Lonergan	Quarter ending May 31, '73	15	61	------	----	380 00
S. Ashton	do.	15	64	------	----	395 00
Joseph Harris	do.	14	56	------	----	350 00
J. H. Claugh	do.	15	16	------	----	155 00
H. B. Miller	do.	15	----	------	----	75 00
Geo. M. Bogue	2 quarters ending May 31, 73	36	69	------	----	525 00
A. J. Galloway	3 " "	33	82	------	----	575 00
John Jones	Quarter "	15	55	------	----	350 00
John Herting	" "	15	61	------	----	380 00
John J. Russell	" "	15	28	2,150	----	322 50
Joseph Roelle	" "	14	15	------	----	145 00
Total		----	----	------	----	3,652 50

All of which is respectfully submitted,

JOHN JONES.
GEO. M. BOGUE.
JAS. ROELLE.
Committee on Miscellaneous Claims.

Report concurred in by the following vote—14 x 0:

Yeas.	*Yeas.*	*Yeas.*	*Yeas.*	*Nays.*
Ashton.	Galloway.	Jones.	Singer.	
Bogue.	Harris.	Lonergan.	Miller.	
Clough.	Harrison.	Raelle.		
Crawford.	Herting.	Russell.	14	0

104 TUESDAY, *Sept.* 2*d*, 1873.

The committee on miscellaneous claims submitted the followin-:

Your committee on miscellaneous claims, to whom were referred the bill for per diem, committee time, &c., for the quarter ending August 31, 1873, having had the same under advisement, beg leave to report and recommend payment of the following:

Pay-Roll.

Names.	Regular session.	Committee time.	No. miles.	Expenses.	Amount.
Samuel Ashton	16	61	------	------	$385
J. H. Claugh	12	19	------	------	155
John Crawford	14	58	86 x	------	403 20
A. J. Galloway	13	49	------	------	310
Joseph Harris	14	53	------	$65	400
John Herting	16	54	------	------	350
John Jones	16	57	------	------	365
Thomas Lonergan	15	54	------	------	345
J. H. Pahlman	12	42	2,916	------	415 80
Jas. Raelle	12	14	------	------	130
J. J. Russell	14	56	1,960	------	448
H. M. Singer, 3 quarters ending Aug., '73	50	52	5,100	------	765
H. B. Miller	16	------	------	------	80
					$4,552 00

All of which is respectfully submitted.

105 JOHN JONES,
JOSEPH ROELLE,
Committee on Miscellaneous Claims.

Report concurred in by the following vote: Yeas 11, nays 0.

MONDAY, *October* 27, 1873.

Board met.

Resolved, That the sum of $192,045 be and the same is hereby levied as a tax upon the taxable property, both real and personal, in the county of Cook, for the purpose of paying interest on the indebtedness of the county existing on the 8th day of August, 1870, as set forth in the foregoing estimate under the head of old indebtedness; and

Resolved further, That the sum of $1,035,320 be and the same is hereby levied as a tax upon the taxable property, both real and personal, in the county of Cook, for county purposes, as set forth in the foregoing estimate under the head of county purposes, amounting in the aggregate to 1,227,365.

106 All of which is respectfully submitted.

GEO. M. BOGUE,
CARTER H. HARRISON,
THOS. LONERGAN,
J. H. CLOUGH,
Committee on Finance.

Report concurred in and resolution adopted by the following vote: Yeas 12, nays 0.

107 *Estimate—Old Indebtedness.*

For the payment of interest on the indebtedness existing at the time of the adoption of the new constitution of 1870:

Interest on $2,460,500 7 per cent. war bonds	172,235		
" " 33,000 7 per cent. bonds, issued to the treasurer of the Graceland Cemetery Improvement Fund	2,310		
Interest on $250,000 7 per cent. public building bonds	17,500		
			192,045
For County Purposes:			
Circuit court, salary of 5 judges	17,500		
Superior do. " " 3 "	10,500		
County do. " " 1 "	7,000		
		35,000	
Insane asylum and poor-house	100,000		
County agent's office	120,000		
Outdoor relief, outside towns	15,000		
State institutions, care of paupers	2,500		
County hospital	40,000		
		277,500	
Sheriff's department, pay-roll	50,000		
Dieting prisoners	18,000		
County jail expenses	25,000		
		93,000	
108 Advertising	2,500		
County attorney	4,000		
County agent	2,500		
County superintendant of schools	1,100		
	10,100		
Amount forward	10,100		192,045
3 engines	4,200		
2 watchmen	1,600		
2 janitors	2,000		
2 physicians	3,800		
2 wardens	2,500		
State's attorney	6,600		
State's attorney's clerk	1,500		
Per diem and mileage board commissioners	14,000		
Clerk of " "	2,500		
Coroner and deputy	4,200		
Coroner jury fees	2,000		
Jurors' fees and mileage	5,000		
Rent, rooms for courts, county ag't, & recorder's office	11,600		
Stationary, printing, blank books, &c.	15,000		
Norman school	13,500		
Election expenses	11,000		
Contingent expenses	60,000		
		171,100	
Errors, abatement, &c		153,060	
7 per cent. short bonds, due July 1st, 1874	200,000		
Interest on same	14,000		
Do. do. $738,000 7 per cent. fire bonds	51,660		
For a sinking fund for the payment of indebtedness incurred since the eighth day of August, 1870	40,000		
		305,660	
			1,035,320
			1,227,365

109 *Pay-Roll.*

Name.	Days session.	Committee.		Miles.	Expenses.	Total.
		Standing.	Special.			
Samuel Ashton	19	58	& S			385 00
J. H. Claugh	18	30	& S			240 00
John Crawford	15	50	& S	980		374 00
A. J. Gallaway	18	39	4			305 00
Joseph Harris	17	48			105 00	430 00
John Herting	19	55				370 00
John Jones	19	54				365 00
Thomas Lonergan	19	54				365 00
J. N. Pahlman	19	41		3,240		462 00
Joseph Roelle	17	17				170 00
J. I. Russell	19	51		2,350		467 50
H. M. Singer	10	10		1,000		150 00
H. B. Miller	19		2			105 00
Total						4,188 50

Respectfully submitted.

JOHN JONES.
GEO. M. BOGUE.
JOS. ROELLE.
Committe on Miscellaneous claims.

Report concurred in and bills ordered paid by following vote:

Yeas.	*Yeas.*	*Yeas.*	*Nays.*
Ashton.	Harris.	Pahlman.	
Bogue.	Harrison.	Russell.	
Claugh.	Herting.	Singer.	
Crawford.	Jones.		
Galloway.	Lonergan.	13	0

110 STATE OF ILLINOIS, } *ss:*
County of Cook, }

I, E. F. C. Klokke, clerk of the county court of Cook county, in the State aforesaid, do hereby certify that the foregoing is a true and correct copy of a portion of the proceedings of the board of county commissioners of Cook county of meetings held April 1st, 1873; June 9th, 1873; September 2d, 1873; October 27th, 1873, and November 28th, 1873. All of which appears from the records and files of my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said county court, at my office, in the city of Chicago, in said county, this 28th day of October, A. D. 1880.

[SEAL.] E. F. C. KLOKKE,
Clerk of the County Court.

(Endorsed:) Filed M'ch 4, 1881. Wm. H. Bradley, clerk.

111 & 112 EXHIBIT D.

Extract from the Constitution of the State of Illinois.

ARTICLE IX.

Revenue.

SECTION (§) 5. "The right of redemption from all sales of real estate for the non-payment of taxes or special assessments of any character whatever, shall exist in favor of owners and persons interested in such real estate for a period of not less than two years from such sales thereof. And the General Assembly shall provide by law for reasonable notice to be given to the owners or parties interested, by publication or otherwise, of the fact of the sale of the property for such taxes or assessments, and when the time of redemption shall expire: *Provided,* That occupants shall in all cases be served with personal notice before the time of redemption expires."

113 EXHIBIT E.

This indenture, made this sixth day of July, in the year eighteen hundred and seventy-five (A. D. 1875), between Thomas Armstrong and Sarah Armstrong, his wife, parties of the first part, and Mrs. Cecelia Josephine Bracken, widow, party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of thirty-nine thousand and six hundred dollars ($39,600) in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said party of the second part, her heirs and assigns, all the following described lots, pieces, and parcels of land situated in the city of Chicago, in the county of Cook, and State of Illinois, to wit:

Part of the west half of the northeast quarter of section five (5), township thirty-nine (39) north, range fourteen (14) east, of the third principal meridian, bounded as follows: Beginning at a point in the centre of Cherry street eight hundred and thirteen feet and twelve-hundredths of a foot ($813\frac{12}{100}$) south from the north line of said section, and running thence west six hundred and eighteen feet and forty-two-hundredths of a foot ($618\frac{42}{100}$) to the west line of said quarter section, thence south along said west line sixty-six (66) feet, thence east six hundred and sixty-two (662) feet to the centre of Cherry street, and thence north sixty-six (66) feet to the place of beginning, containing one (1) acre of land, more or less, and reserving thirty-three (33) feet in width from the east end thereof for a
114 highway; the same otherwise known as lot six (6), block fifty (50), Elston's Addition to the city of Chicago. Also part of the northeast quarter of section five (5), township thirty-nine (39) north, of range fourteen (14) east, of the third principal meridian, bounded as follows, viz: Beginning in the centre of Cherry street seven hundred and forty $\frac{52}{100}$ feet ($740\frac{52}{100}$) south from the north line of said section, and running thence west parallel with said north line five hundred and eighty-four $\frac{10}{100}$ feet ($584\frac{10}{100}$) to the

centre of the north branch of the Chicago river, thence south twenty-five and a half ($25\frac{1}{2}$) degrees west down the river's centre eighty $\frac{52}{100}$ feet ($80\frac{52}{100}$), thence east parallel with the north line of the said section six hundred and eighteen $\frac{42}{100}$ to the centre of Cherry street, and thence north seventy-two $\frac{60}{100}$ feet ($72\frac{60}{100}$) to the place of beginning, and containing one acre of land, more or less, reserving thirty-three (33) feet in width across the east end of said premises for a highway, this parcel being by a recent subdivision designated as lot five (5), in block fifty (50), in Elston's Addition to Chicago.

Together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and revisions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right. title, interest, claim, and demand whatsoever of the said party of the first part, either in law or equity, of, in, and to the above bargained premises, with the hereditaments and appurtenances. To have and to hold the said premises above bargained and described, with the appurtenances,
115 unto the said party of the second part, her heirs and assigns forever.

And the said Thomas Armstrong and Sarah Armstrong, his wife, parties of the first part, hereby expressly waive, release, and relinquish unto the said party of the second part, her heirs, executors, administrators, and assigns, all right, title, claim, interest, and benefit whatever, in and to the above-described premises, and each and every part thereof which is given by or results from all laws of this State pertaining to the exemption of homesteads.

And the said Thomas Armstrong and Sarah Armstrong, party of the first part, for themselves, their heirs, executors, and administrators, doe covenant, grant, bargain, and agree to and with the said party of the second part, her heirs and assigns, that at the time of the ensealing and delivery of these presents, they — well seized of the premises above conveyed, as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in law, in fee simple, and hagood right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, and encumbrances of what kind or nature soever. And also that the said party of the first part, their heirs and all persons claiming under said party of the first part, shall and will at any time hereafter, upon the reasonable request and at the proper cost of said party of the second part, her heirs or assigns, execute or cause to be executed such further and other
116 lawful and reasonable acts, conveyances, and assurances in law for the more effectually vesting and confirming the premises hereby granted, or so intended, to said party of the second part, his heirs or assigns, as by the said party of the second part, his heirs or assigns, shall be reasonably required, and the above bargained premises in the quiet and peaceful possession of the said party of the second part, her heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any

part thereof, the said party of the first part shall and will warrant and forever defend. In testimony whereof, the said party of the first part ha- hereunto set — hand and seal- the day and year first above written.

THOMAS ARMSTRONG. [SEAL.]
her
SARAH x ARMSTRONG. [SEAL.]
mark

Signed, sealed, and delivered in presence of—
MATTHEW MARX.

STATE OF ILLINOIS. }
Cook County, City of Chicago, } *ss:*

I, Mathew Marx, a notary public in and for city of Chicago, Cook county, and State aforesaid, do hereby certify that Thomas Armstrong and Sarah Armstrong, his wife, who are personally known to me to be the real persons whose names are subscribed to the foregoing deed as having executed the same, appeared before me this day in person, and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act and deed, for the uses and purposes therein set forth. And the said Sarah Armstrong, wife of the said Thomas Armstrong, having been by me examined separate and apart, and out of the hearing of her husband, and the contents and meaning of the said in-
117 strument of writing having been by me fully made known and explained to her, and she being by me fully informed of her rights under the homestead laws of the State of Illinois, acknowledged that she had freely and voluntarily executed the said deed, and relinquished her dower, and conveyed all other right, title, and interest, and also all her rights and advantages, under and by virtue of all laws of said State of Illinois relating to the alienation or exemption of homesteads, in and to the lands and tenements therein mentioned, without the compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and notarial seal, at the place aforesaid, this 7 day of July, A. D. one thousand eight hundred and seventy-five (A. D. 1875.)

[SEAL.] MATHEW MARX, *N. P.*

Endorsed: No. 37831. Filed for record this 7 day of July, A. D. 1875, at 3 P. M. James Stewart, recorder.

STATE OF ILLINOIS, }
County of Cook, } *ss:*

I, James W. Brockway, recorder of deeds in and for said county, in the State aforesaid, do hereby certify that the annexed is a true and correct copy of the record of a certain instrument filed in my office, the 7 day of July, A. D. 1875, as document No. 37831, and recorded in book 351 of records, at page 428.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at Chicago, this 20th day of October, A. D. 1880.

JAS. W. BROCKWAY, [SEAL.]
Recorder.

(Endorsed:) Filed March 4, 1881. W. H. Bradley, clerk.

118 EXHIBIT F.

STATE OF ILLINOIS, }
County of Cook, City of Chicago, } ss:

Aahel Gage, of lawful age, being first duly sworn, doth depose and say that he relies on the facts stated in this and other affidavits hereto annexed and the certificate as compliance with the provisions of the constitution and laws of this State in this behalf, and therefore says that he, this affiant has complied with all the provisions of the constitution and laws of this State to entitle him or his assignee to a deed or deeds, and asks that a deed or deeds may be issued, as provided by law, on the land described in the annexed certificate of tax sale to this affiant.

ASAHEL GAGE.

Subscribed and sworn to, this 9th day of July, 1877, before me.
[SEAL.] AUGUSTUS N. GAGE,
Notary Public.

STATE OF ILLINOIS, }
County of Cook, } ss:

U. George Taylor, of lawful age, being duly sworn, says that he resides in said county, and is the agent of Asahel Gage; that as such agent, deponent, on the 21st day of June, A. D. 1876, served a notice, of which the annexed is a true copy, on Thomas Armstrong, by handing the same to and leaving the same with him, said Thomas Armstrong, at Chicago, in said county. Deponent is ac-
119 quainted with the premises mentioned in said notice, and the person so served was the only person in possession thereof three months before the time of redemption from the sale mentioned in said notice expired, to wit, on the 21st day of June, A. D. 1876, and for more than thirty days previous and subsequent thereto; and said premises were not taxed in the name of any person. And deponent also served a copy of said notice on Bassett and Hammond on June 16th, 1876.

U. GEORGE TAYLOR.

Sworn to, this 9th day of July, A. D. 1877, before me.
[SEAL.] AUGUSTUS N. GAGE,
Notary Public.

Notice of Sale for Tax.

To —— or whom it may corncern:

This is to notify you that on the 27th day of October, 1874, the undersigned purchased at a sale of lots and lands for taxes and special assessments, authorized by the laws of the State of Illinois, the following described real estate, taxed in no name, to wit: Lot 6, in block 50, Elston's Addition to Chicago; said taxes and special assessments were levied for the year 1873, and that the time of re-

demption thereof from said sale will expire on the 27th day of October, 1876.

ASAHEL GAGE,
Room 14, *Portland Block, Chicago.*

State and County Certificate of Sale for Taxes of A. D. 1873, *&c.*

No. 3683, volume 13, page 28.

STATE OF ILLINOIS, } ss:
Cook County, }

This is to certify that at the August term, A. D. 1874, of
120 the county court of said Cook county, on the application of Henry B. Miller, county treasurer and *ex-officio* collector of the revenue of Cook county, for judgment for the delinquent State, county, town, school, road, and park taxes, and special assessments levied and assessed upon the lands and lots in the county of Cook and State of Illinois for the year 1870, and for judgment for the State, county, town, school, road, and park taxes and special assessments and costs thereon (if any) contained in the collector's books, with the warrants attached thereunto, issued by the county clerk of Cook county, State of Illinois, for the year 1873, which remain now due and unpaid, and for judgment for the amounts for which lands and lots were "forfeited to the State of Illinois" for the years 1872 and 1871, together with interest at ten per cent., and costs remaining due and unpaid thereon and returned delinquent and unpaid by the town collectors of State and county taxes for said several years pursuant to law, a judgment was entered against the following-described lands or lots for so much of the said taxes and special assessments as were found to be due thereon, and costs, being for the sum of twenty-five dollars and 56 cents, as follows, to wit:

For A. D. 1873	$25 16
Costs	40
Total	$25 56

And in and by said judgment it was ordered by said court that said lands or lots, or so much thereof as should be sufficient to satisfy the amount of said judgment, be sold as the law directs, to wit: Lot 6, block 50, in Elston's Addition to Chicago, section —, town —, range —, east of the third principal meridian, situated in said Cook county.

121 And that in pursuance of the statute in such case made and provided process was issued to said treasurer and *ex-officio* collector of said county to sell said lands or lots, or so much thereof as should be necessary to satisfy the said judgment. That by virtue of said process said collector did, on the 23d day of September, A. D. 1874, open the sale upon said process, and said sale being duly continued from day to day by adjournments duly announced, and the same being reached in its order, said collector did this day offer for sale, and did sell, so much of said lands or lots as would pay the sum aforesaid; and that Asahel Gage became the

purchaser of the whole of said lands or lots, and paid thereon the sum aforesaid, that being the least quantity of said lands or lots for which any person would pay the said amount due thereon.

Now, therefore, in case the said lands or lots above sold are not redeemed in manner and form as the law directs, within two years from the date hereof, the said purchaser, his heirs or assigns, will be entitled to receive a deed of the lands or lots above sold as by law directed. Unless the holder of this certificate takes out the deed, as entitled by law, and files the same for record within one year from and after the time for redemption expires, then this certificate shall, from and after the expiration of such one year, be absolutely null. If the holder of this certificate shall be prevented from obtaintng a deed by injunction or order of any court, or by refusal of the clerk to execute the same, the time he is so prevented shall be excluded from the computation of such time.

In witness whereof I have hereunto subscribed my name
122 and affixed the seal of said county court, at Chicago, in said county, this 27th day of October, A. D. 1874.

HERMANN LIEB, [SEAL.]
Clerk of the County Court.

Countersigned:
H. B. MILLER,
Treasurer and Ex-officio Collector of Cook County.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, E. F. C. Klokke, clerk of the county court of Cook county, in the State aforesaid, do hereby certify that the foregoing is a true and correct copy of affidavits of Asahel Gage, U. George Taylor, also of certificate of sale for taxes of A. D. 1873, &c., No. 3683, upon which tax deed No. 1392 was issued to Asahel Gage, September 6th, 1877, all of which appears from the records and files of my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said county court at my office, in the city of Chicago, in said county, this 22nd day of October, A. D. 1880.

E. F. C. KLOKKE,
Clerk of the County Court.

(Endorsed:) Filed March 4, 1881. W. H. Bradley, clerk.

123 EXHIBIT G.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, E. F. C. Klokke, clerk of the county court of Cook county, in the State aforesaid, do hereby certify that the total assessed valuation of all property, real and personal, of the city of Chicago, for city taxes for the year 1875, as equalized by the State board of equalization, was one hundred seventy-four millions five hundred fifty-six thousand four hundred seventy-four dollars ($174,556,474.00), all of which appears from the records and files of my office.

In witness whereof, I have hereunto set my hand and affixed the

seal of said county court, at my office, in the city of Chicago, in said county, this 22nd day of October, A. D. 1880.

[SEAL.] E. F. C. KLOKKE,
Clerk of the County Court.

(Endorsed:) Filed March 4, 1881. W. H. Bradley, clerk.

124 EXHIBIT H.

Be it ordained by the city council of the city of Chicago:

SECTION 1. That the sum of five million one hundred and twenty-three thousand nine hundred five dollars and $\frac{29}{100}$ ($5,123,905$\frac{29}{100}$), the same being the total amount of appropriations heretofore legally made for all corporate purposes of the city of Chicago, and to be collected from the tax levy of the current fiscal year of said city, be, and the same is hereby, levied and assessed on all the real and personal property within said city subject to taxation, according to the value of such property, as the same is assessed for State and county purposes for the current year, the said tax so levied and assessed being for the current fiscal year of said city, and the said appropriations, the total amount of which has been ascertained as aforesaid, being as follows, to wit: * * *

For entertaining official visitors	$2,000 00
* * * * *	
For interest on temporary loans for fire department	25,000 00
* * * * *	
Interest.	
For the payment of interest on the general bonded (municipal) debt of the city, and in temporary loans, in addition to the unexpired balance April 1, 1875, and to amounts received for interest	300,000 00
* * * * *	

125 *Police Department.*

For interest on tempor'y loans	25,000 00
* * * * *	
Water Works.	
To replace like amount transferred to water tax fund for the enlargement of water mains, by order of Common Council, passed Aug. 31, 1874	200,000 00
For interest on temporary loans for this fund	40,000 00
* * * * *	

STATE OF ILLINOIS, }
Cook County, City of Chicago, } *ss:*

I, P. J. Howard, city clerk of the city of Chicago, do hereby certify that the above and foregoing is a true and correct copy of a portion of an ordinance levying taxes for the fiscal year 1875 of said city, passed Aug. 9, 1875, and that I am the keeper of the original ordinance.

Witness my hand and the corporate seal of said city, this 23d day of October, A. D. 1880.

[SEAL.]

P. J. HOWARD,
City Clerk.

(Endorsed:) Filed March 4, 1881. W. H. Bradley, clerk.

126 EXHIBIT I.

I, Theodore T. Gurney, comptroller of the city of Chicago, do hereby certify that the foregoing is a correct transcript of entries in the books of [the] city of Chicago for A. D. 1875, and that they show correctly the bonded debt and temporary loans of said city, Jan'y 1st, April 1st, and December 1st, 1875, and that I am the keeper of the books containing the same.

Funded Debt.

Chicago City bonds, outstannding, (old issues):		
* (D) 6 per cent. bonds, due July 1, 1873	$2,000 00	
* (E) 6 per cent. bonds, due July 1, 1874	1,000 00	
* (F) 6 per cent. bonds, due July 1, 1875	1,000 00	
* (G) 6 per cent. bonds, due July 1, 1876	95,000 00	
		$99,000 00
(New Issues.) "Miscellaneous:"		
(K) 7 per cent. bonds, due April 1, 1881	$863,500 00	
(M) 7 per cent. bonds, due April 1, 1885	23,000 00	
(L) 7 per cent. bonds, due December 1, 1892	39,000 00	
(E) 7 per cent. bonds, due Jan'y 1, 1894	60,000 00	
(F) 6 per cent. bonds, due July 1, 1895	100,000 00	
		$1,085,500 00
City Bridewell, (or House of Correction) (O):		
7 per cent. bonds, due July 1, 1886	90,000 00	
7 per cent. bonds, due July 1, 1899	150,000 00	
		240,000 00
Tunnel (P):		
7 per cent. bonds, due July 1, 1896	100,000 00	
7 per cent. bonds, due Jan'y 1, 1898	100,000 00	
7 per cent. bonds, due July 1, 1898	100,000 00	
7 per cent. bonds, due Jan'y 1, 1899	100,000 00	
7 per cent. bonds, due July 1, 1899	70,000 00	
7 per cent. bonds, due Sept. 1, 1899	229,000 00	
		699,000 00
City Hall (Q):		
7 per cent. bonds, due Oct. 1, 1888	$27,000 00	
7 per cent. bonds, due Oct. 1, 1898	100,000 00	
7 per cent. bonds, due July 1, 1899	200,000 00	
		327,000 00

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School Construction (N):		
7 per cent. bonds, due July 1, 1885	13,000 00	
7 per cent. bonds, due Jan'y 1, 1886	22,000 00	
7 per cent. bonds, due Jan'y 1, 1887	18,000 00	
		53,000 00

* These four bonds are not yet presented for payment. Jan'y 1, 1876.

School (R):

7 per cent. bonds, due April 1, 1887	199,500 00	
7 per cent. bonds, due Jan'y 1, 1888	150,000 00	
7 per cent. bonds, due July 1, 1888	149,000 00	
7 per cent. bonds, due July 1, 1890	420,000 00	
7 per cent. bonds, due July 1, 1899	200,000 00	
		1,118,500 00
Total municipal (bonded) debt		3,622,000 00

Sewerage Bonds:

6 per cent. bonds, due July 1, 1880	$87,000 00	
7 per cent. bonds, due July 1, 1880	413,000 00	
7 per cent. bonds, due July 1, 1884	461,000 00	
7 per cent. bonds, due July 1, 1888	344,000 00	
7 per cent. bonds, due July 1, 1889	44,000 00	
7 per cent. bonds, due July 1, 1892	490,000 00	
7 per cent. bonds, due July 1, 1894	785,000 00	
7 per cent. bonds, due July 1, 1895	13,000 00	
		2,637,000 00

River Improvement Bonds:

7 per cent. bonds, due July 1, 1890	250,000 00	
7 per cent. bonds, due July 1, 1892	250,000 00	
7 per cent. bonds, due July 1, 1893	500,000 00	
7 per cent. bonds, due July 1, 1894	350,000 00	
7 per cent. bonds, due July 1, 1895	1,271,000 00	
		2,621,000 00
Total Sewerage (bonded) debt		5,258,000 00

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Water Bonds:

* 6 per cent. bonds, due July 1, 1874	$1,000 00	
6 per cent. bonds, due July 1, 1877	272,000 00	
6 per cent. bonds, due July 1, 1878	152,000 00	
6 per cent. bonds, due July 1, 1880	293,000 00	
6 per cent. bonds, due July 1, 1882	199,000 00	
7 per cent. bonds, due July 1, 1882	140,000 00	
7 per cent. bonds, due July 1, 1888	150,000 00	
7 per cent. bonds, due July 1, 1889	225,000 00	
7 per cent. bonds, due July 1, 1890	301,000 00	
7 per cent. bonds, due July 1, 1892	799,000 00	
7 per cent. bonds, due July 1, 1894	545,000 00	
7 per cent. bonds, due July 1, 1895	1,500,000 00	
Total water (bonded) debt		$4,577,000 00
Total bonded debt		$13,457,000 00

Certificates of Indebtedness Outstanding:

January 1, 1875	$2,281,169 47

Certificates of Indebtedness Outstanding:

April 1, 1875	3,504,894 57

Certificates of Indebtedness Outstanding:

January 1, 1876	4,641,096 52

[SEAL.] THEODORE T. GURNEY,
City Comptroller.

Chicago, Nov. 9th, 1880.

Attest: P. J. HOWARD,
City Clerk.

(Endorsed:) Filed March 4, 1881. Wm. H. Bradley, clerk.

* This bond not yet presented for payment. (Jan'y 1, 1876.)

129 EXHIBIT J.

Be it ordained by the city council of the city of Chicago:

SECTION 1. That the sum of five millions one hundred twenty-three thousand nine hundred five $\frac{29}{100}$ ($5,123,905$\frac{29}{100}$) dollars, the same being the total amount of appropriations heretofore legally made for all corporate purposes of the city of Chicago, and to be collected from the tax levy of the current fiscal year of said city be, and the same is hereby, levied and assessed on all the real and personal property within said city subject to taxation according to the value of such property as the same is assessed for State and county purposes for the current year, the said tax so levied and assessed being for the current fiscal year of said city, and the said appropriations, the total amount of which has been ascertained as aforesaid, being as follows, to wit:

Water Works.

For interest on temporary loans for this fund..... $40,000 00

Entertainment of Official Visitors.

For entertaining official visitors..... $2,000 00

Fire Department.

For interest on temporary loans for fire department.. $25,000 00

Interest.

For payment of interest on the general bonded (municipal) debt of the city, and on temporary loans, in addition to the unexpected balance April 1, 1875, and to amounts received for interest..... $300,000 00

Police Department.

For interest on temporary loans..... $25,000 00

130 STATE OF ILLINOIS, } ss.:
County of Cook, }

I, E. F. C. Klokke, clerk of the county court of Cook county, in the State aforesaid, do hereby certify that the foregoing is a true and correct copy of a part of the city tax levy for the year A. D. 1875, showing amount for interest on temporaroy loans for fund of water works; also for entertaining official visitors, for interest on temporary loans, fire department, for interest on the general bonded (municipal) debt of the city, and for interest on temporary loans, police department; all on which the taxes were extended on the collector's warrant for 1875; all of which appears from the records and files in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said county court, at my office, in the city of Chicago, in said county, this eighth day of November, A. D. 1880.

[SEAL.] E. F. C. KLOKKE,
Clerk of the County Court.

Endorsed: Filed March 4, 1881. W. H. Bradley, clerk.

131 STATE OF ILLINOIS, } ss:
County of Cook, }

I, E. F. C. Klokke, clerk of the county court of Cook county, in the State aforesaid, do hereby certify that the valuation of the real estate, personal and railroad property in Cook county, as equalized and assessed by the State board of equalization for the year A. D. 1873, was $306,841,373, being the amount upon which the general, State, and county taxes were extended for said year.

All of which appears from the records and files of my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said county court, at my office, in the city of Chicago, in said county, this 19th day of November, A. D. 1880.

[SEAL.] E. F. C. KLOKKE,
Clerk of the County Court.

STATE OF ILLINOIS, } ss:
County of Cook, }

132 I, E. F. C. Klokke, clerk of the county court of Cook county, in the State aforesaid, do hereby certify that the sum of $1,221,716 $\frac{78}{100}$ was levied by the board of county commissioners as a tax to be extended against all the real estate, personal and railroad property in said Cook county, and that said amount as levied was so extended upon the valuation as assessed and equalized by the State board of equalization on the tax warrants for the year 1873 as county tax.

All of which appears from the records and files of my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said county court, at my office, in the city of Chicago, in said county, this 19th day of November, A. D. 1880.

[SEAL.] E. F. C. KLOKKE,
Clerk of the County Court.

133–134 *A correct list of taxable real estate, lands, lots, and blocks, in the town of North Chicago, in the county of Cook, and State of Illinois, as assessed and equalized for the year A. D.* 1873.

Names.	Description.		Forfeited to State.	Assessed valuation.	Valuation as corrected and equalized by county board.	Valuation as equalized by State board of equalization.	State tax.	County tax.	Town tax.	Lincoln Park tax.	Aggregate of tax of A. D. 1873.	Totals.	When paid, post-office address, &c.	
	Lot.	*Block.*	*Year.*											
1. Elston's addition to Chicago.														1
2.			Forfeiture.											2
3.	6	50	Forfeiture. ------ ------	$1,100	$1,155	$2,391	$8 61	$9 57	$1 09	$7 56	$26 83	$26 83	25.16. Sold.	3

135–136 *A correct list of taxable real estate, lands, lots, and blocks, in the town of North Chicago, in the county of Cook, and State of Illinois, as assessed and equalized for the year A. D.* 1875, *upon which assessment or valuation, as equalized by the State Board of Equalization, the taxes for said year have been computed and extended, as shown in the respective columns below, also showing the "back taxes of other years," and the amounts due on lands and lots "previously forfeited to the State," with interest, costs, and printer's fees due and added to the taxes of said year A. D.* 1875.

Names.	Description.		Back taxes.	Forfeited to State.	Assessed valuation.	Valuation as corrected and equalized by county board.	Valuation as equalized by State board of equalization.	State tax.	County tax.	Town tax.	City tax of the city of Chicago.	Lincoln Park tax.	Aggregate of tax of A. D. 1875.	Printer's fees.	Aggregate of back taxes and forfeitures.	Totals.
	Lot.	*Block.*	*Year.*	*Year.*												
1. Elston's addition to Chicago.				Forfeitures.												
2.	6	50	-----	----- -----	$13 00	$13 00	$19 76	$5 93	$13 05	$82 00	$58 10	$11 07	$88 97	---	-----	$121 38
			1874	Forfeitures.	-----	-----	-----	7 60	12 67	222 00	-----	9 82	-----	10c	$32 41	

137 STATE OF ILLINOIS, } *County of Cook,* } ss:

I, E. F. C. Klokke, clerk of the county court of Cook county, in the State aforesaid, do hereby certify that the foregoing are true and correct copies of the collector's tax warrants for the general, State, and county, & etc. taxes for the year 1873, and for the State, county, and city & etc. taxes for the year 1875, so far as the same relate to the real estate described therein, showing the kind and amount of said taxes as extended said real estate for the years 1873 & 1875.

All of which appears from the records and files of my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said county court, at my office, in the city of Chicago, in said county, this 19th day of November, A. D. 1880.

[SEAL.] E. F. C. KLOKKE,
Clerk of the County Court.

138 Be it ordained by the city council of the city of Chicago:

SECTION 1. That the sum of five million one hundred twenty-three thousand nine hundred five $\frac{29}{100}$ ($5,123,905 $\frac{29}{100}$) dollars, the same being the total amount of appropriation heretofore legally made for all corporate purposes of the city of Chicago, and to be collected from the tax levy of the current fiscal year of said city, be, and the same is hereby, levied and assessed on all the real and personal property within said city subject to taxation, according to the value of such property as the same is assessed for State and county purposes for the current year, the said tax so levied and assessed being for the current fiscal year of said city, and the said appropriations, the total amount of which has been ascertained as aforesaid, being as follows, to wit:

Interest.

139 For payment of interest on the general bonded (municipal) debt of the city and on temporary loans, in addition to the unexpended balance April 1st, 1875, and to amount received for interest.. $300,000 00

Entertainment of Official Visitors.

For entertaining official visitors 2,000 00

Water Works.

For interest on temporary loans for this fund..... $40,000 00

Fire Department.

For interest on temporary loans for fire department.. 25,000 00

Police Department.

For interest on temporary loans..... 25,000 00

SECTION 2. The city council hereby elects to certify to the county clerk of Cook county, Illinois, the amount required to be raised by taxation upon the assessments of property for the State and county

taxes for the current year, to wit, the year 1875, and to collect the taxes for the current fiscal year of said city in the manner provided for in the general revenue laws of this State.

SECTION 3. There is hereby certified to the county clerk of said Cook county the several amounts appropriated, as aforesaid, and the said total amount, to wit, the sum of five million one hundred twenty-three thousand nine nundred five $\frac{29}{100}$ ($5,123,905_{\frac{29}{100}}$) dollars, which said several amounts, constituting said total amount, the city of Chicago requires to be paid by taxation for the current fiscal year of said city, and the city clerk of said city is hereby directed to file with the county clerk of said Cook county, on the second Tuesday in August, A. D. 1875, a copy of this ordinance, duly certified by the said city clerk, and also at said last-mentioned time to certify to the said county clerk the said total amount required to be raised by taxation, as aforesaid, in accordance with the provisions of an act entitled "An act for the assessment of property and for the levy and collection of taxes," approved March 30, 1872, and amended by act approved May 3, 1873.

STATE OF ILLINOIS, } *ss:*
County of Cook, City of Chicago, }

I, Joseph K. C. Forrest, city clerk of the city of Chicago, do hereby certify that the above and foregoing is a true and correct copy of an ordinance concerning the taxes of the current fiscal year of said city, and of the endorsements thereon, which said ordinance was passed by the city council of said city, August 9, 1875, and approved by the mayor of said city August 10, 1875.

I do further certify that the original, of which the foregoing is a copy, is entrusted to my care for safe keeping, and is on file in my office.

Witness my hand and the corporate seal of said city, this tenth day of August, A. D. 1875.

(Signed) JOS. K. C. FORREST,
City Clerk.

STATE OF ILLINOIS, } *ss:*
County of Cook, }

I, E. F. C. Klokke, clerk of the county court of Cook county, in the State aforesaid, do hereby certify that the foregoing is a true and correct copy of so much of the appropriation ordinance of the city of Chicago for the year 1875 as relates to the items in the foregoing copy; also showing the total amount of the tax levied by the city of Chicago for the year 1875, as set forth in said copy; and I hereby also certify that said total amount as levied by said city of Chicago was extended against the real estate, personal property, and railroad property in the city of Chicago as the city taxes of the city of Chicago, on the tax warrants for the general taxes and assessments for the year 1875.

All of which appears from the records and files of my office.

In witness whereof I have hereunto set my hand and affixed the

seal of said county court, at my office, in the city of Chicago, in said county, this 19th day of November, A. D. 1880.

[SEAL.] E. F. C. KLOKKE,
Clerk of the County Court.

143 (Endorsed:) Filed M'ch 4, 1881. Wm. H. Bradley, cl'k.

144 EXHIBIT L.

This lease, made this 1st day of June, A. D. 1880, between Harmon Pumpelly, of the city of Albany, of the county of Albany and State of New York, party of the first part, and Frederick Edler, of the city of Chicago, of the county of Cook and State of Illinois, party of the second part, witnesseth: That the premises situate in the city of Chicago, county of Cook and State of Illinois, described as lots five (5) and six (6), in block number fifty (50), in Elston's Addition to Chicago, are hereby leased by said party of the first part to said party of the second part from the first day of June, A. D. 1880, until the first day of May, A. D. 1882, to be used and occupied as a lumber yard, and for no other purpose or business whatsoever.

In consideration whereof, said party of the second part is to pay to said party of the first part, at the office of Mattocks & Mason, in the city of Chicago, as rent for the same, at the rate of two hundred (200) dollars per annum, in equal monthly installments of sixteen and $\frac{66}{100}$ dollars each, payable in advance, on the first day of each and every month during said term and until fully paid. It is further agreed by said party of the second part that all water rents assessed on said leased premises, or any part thereof, during the term of this lease, or shown to be due by the water meter connected therewith, will be paid when due by said party of the second part, in addition to the rents hereby agreed upon, and that the premises hereby leased and the alleys adjoining will be kept in a clean and healthy condition at the expense of said party of the second part, in accordance with the laws and regulations of the city, town, or vil-

144½ lage authorities and health departments during the term of this lease, and that said leased premises, with the improvements connected therewith, have been received in good order and condition, and will be so kept at the expense of said party of the second part during the term of this lease; and that said party of the first part may pay and discharge any water rents due or to become due upon the premises hereby leased, or any part thereof, and the amount so paid shall become immediately due and owing from said party of the second part to said party of the first part, and that during the term of this lease the said party of the second part will not allow any intoxicating liquors to be sold, given away, or disposed of upon said leased premises, or upon any part of the same, and that said party of the second part will at all times save said leased premises and said party of the first part harmless and indemnified from any damage, costs, or expenses resulting from the sale, giving away, or disposal of any intoxicating liquors upon said leased premises, and every part thereof, during the term of this lease, or while said

party of the second part shall remain in possession of the premsies hereby leased. It is further agreed by said party of the second part that neither the premises hereby leased, nor any part thereof, shall be used for any gaming or immoral purposes, nor for any purpose or business termed by any insurance company as specially or extra hazardous without the written consent of said party of the first part; and if on account of the use of said premises, or any part thereof, for specially or extra hazardous purposes during the term of this lease, the rate of insurance on said leased premises, or on any other building or property owned by said party of the
145 first part in the vincinity of the premises hereby leased, shall be increased over and above its ordinary insurance rate, any moneys paid for such increased risk by said party of the first part shall be refunded by said party of the second part immediately on demand, and said party of the second part may also be enjoined from such further use of said leased premises, or this lease may thereupon be terminated, at the option of said party of the first part. It is further understood and agreed by and between the parties hereto, that the right of said party of the first part, or his agents or employees, to use the premises hereby leased, without charge, for the purpose of improving or repairing the same, or the premises adjoining, is hereby expressly reserved to and by said party of the first part, or his agents, shall for thirty days prior to the termination of this lease, have the right to place rent signs on the premises hereby leased, and to show parties desiring to examine the same through and over any and every part thereof, and may also, at any time, terminate this lease for the breach of any covenant or agreement herein contained, by giving said party of the second part, or his heirs, assigns, or sub-tenants, or any occupant of the premises hereby leased, not less than five days notice in writing of the election of said party of the first part so to do. It is also expressly agreed by said party of the second part, that this lease shall not be assigned nor said leased premises sub-let, or under rented without the written permission of said party of the first part. And it is further understood and agreed, by and between the parties hereto, that the said party of the first part reserves the right to
146 cancel this lease (in case of sale of said property), by giving said party of the second part six months (6 mos.) notice in writing of his intention so to do. It is further mutually agreed by and between the parties hereto, that the time for the payment of the rents and water rents, as herein provided, shall be an essential part of this lease, and that all the agreements herein contained shall extend to, and be obligatory upon, the heirs, executors, administrators, and assigns of the respective parties hereto. In testimony whereof, the said parties have hereunto set their hands and seals, the day and year first above written.

FRIEDRICH EDLER. [SEAL.]
HARMON PUMPELLY. [SEAL.]

(Endorsed:) Filed March 4, 1881. Wm. H. Bradley, clerk.

147 EXHIBIT "1."—GAGE.

Filed August 8th, 1874.

HERMANN LIEB,
County Clerk.

A list of the delinquent lands and lots in the county of Cook, and State of Illinois, upon which remain due and unpaid the taxes levied and assessed for the year, A. D. 1873, and upon which remain due and unpaid the amounts for which such property was forfeited to the State of Illinois for the years 1871 and 1872, together with interest at ten per cent. and costs thereon, and upon which remain due and unpaid the taxes and special assessments for the year 1870, (embracing only the delinquent taxes and special assessments, together with the interest and cost thereon, if any, contained and set forth in the collector's books, with the warrants attached thereunto, issued by the county clerk of Cook county, State of Illinois, for the year 1873, which now remain due and unpaid,) and showing the names of the owners so far as known, the proper description of the lands and lots, the valuation on which the taxes for the years 1873 and 1870 are extended, the amounts of each kind of tax for the year 1873, and each kind of tax and special assessment for the year 1870 charged against each parcel of land or lot, and the amounts for which such lands and lots were forfeited to the State of Illinois for the years 1871 and 1872, and interest and cost charged against each
148 parcel of land or lot, and the total amount charged against each parcel of land or lot respectively, all of which taxes and special assessments so levied and assessed for said years, and hereinafter set forth and enumerated, and the cost and interest thereon, Henry B. Miller, county treasurer, and *ex-officio* county collector of the taxes of Cook county, State of Illinois, has been unable to collect, and which said list is this day reported to the county clerk of said county by said county collector, and duly filed in the office of said county clerk.

Elston's Addition to Chicago, lot 6, block 50. For 1873, valuation as equalized by the State board of equalization, $23.91.

State tax	$8 61
County tax	9 57
Town tax	1 09
Lincoln Park tax	7 56
Aggregate am't of taxes for A. D. 1873, as shown by previous columns, $26.83.	
Totals	$26 83

149 STATE OF ILLINOIS, }
County of Cook, } *ss.*

I, Henry B. Miller, collector of the county of Cook, do solemnly swear that the foregoing is a true and correct list of the delinquent lands and lots within the county of Cook upon which I have been

unable to collect the taxes and special assessments, interest, and printers' fees charged thereon, as required by law, for the year or years therein set forth; that said taxes, assessments, interest, and printers' fees now remain due and unpaid, as I verily believe.

HENRY B. MILLER,
County Treasurer and ex-officio Collector of Cook County, Illinois.

Subscribed and sworn to before me, this 8th day of August, 1874.
[SEAL.] HERMANN LIEB,
County Clerk.

150 *Cook County Delinquent Tax List.*

OFFICE OF THE COUNTY TREASURER AND EX-OFFICIO COLLECTOR, COOK COUNTY, ILL.,
CHICAGO, *July* 24, 1874.

The following list—the caption of which is "List Number One,"—is a list of delinquent lands and lots in the county of Cook, and State of Illinois, upon which remain due and unpaid the taxes levied and assessed for the year 1873, and upon which remain due and unpaid the amounts for which such property was forfeited to the State of Illinois for unpaid taxes for the years 1871 and 1872, together with interest at 10 per cent. and costs thereon, and upon which remain due and unpaid the taxes and special assessments for the year 1870 (embracing only the delinquent taxes and special assessments, together with the interest and cost thereon, if any, contained and set forth in the collector's books, with the warrant attached thereunto issued by the county clerk of Cook county, State of Illinois, for the year 1873, which now remain due and unpaid), together with the names of the owners thereof, so far as known, and the total amount due and unpaid on each tract and lot.

EXPLANATORY.—In the following list the figures in the columns headed "year" indicate the year for which the taxes were due and unpaid. The figures in the columns headed "amount" represent the taxes, interest, and costs, if any, for each year respectively, when more than one year's tax is due upon the same described property. The figures in the column headed "total tax" represent the total amount of taxes due thereon respectively:

North Chicago.

151 Elston's Addition to Chicago.

L't	Bl'k.	Year.	Total Tax.
6.	50.	1873.	$26.83.

Public notice is hereby given that the undersigned, county treasurer and *ex-officio* county collector of Cook county, State of Illinois, will apply to the county court of said county, at the August term thereof, to commence on the third Monday in August, A. D. 1874, being the seventeenth (17th) day of August, 1874, for judgment against the delinquent lands, lots, and real estate described in the foregoing list, the caption of which is, "List Number One," for

the taxes for the year 1873, and costs due thereon, and for the amounts for which such property was forfeited to the State of Illinois for the unpaid taxes for the years 1871 and 1872, together with interest at 10 per cent., and costs thereon, and for the taxes and special assessments for the year 1870, and costs due thereon, and for an order to sell said lands, lots, and real estate for the satisfaction thereof; and also that on the sixth Monday next succeeding the third Monday in August, 1874, being the twenty-eighth (28) day of September, 1874, at the hour of ten o'clock a. m., all the lands, lots, and real estate described in the said "List Number One," against which judgment shall be rendered, and for the sale of which an order shall be made, will be exposed to public sale at the building where the county court is held in said county, to wit, the county building, situate on the northwest corner of Dearborn and Michigan streets, in the city of Chicago, in said county of Cook, for the amount of taxes, special assessments, interest, and costs due thereon.

Dated Chicago, July 24, 1874.

152 HENRY B. MILLER,
County Treasurer, and ex-officio County Collector of Cook County, State of Illinois.

Filed August 17th, 1874.

HERMANN LIEB, *Clerk.*

County Collector's Delinquent List.

Filed August 8th, A. D. 1874.

HERMAN LIEB,
County Clerk of Cook County.

Record of a list of the delinquent lands and lots in the County of Cook and State of Illinois upon which remain due and unpaid the taxes levied and assessed for the year A. D. 1873, and upon which remain due and unpaid the amounts for which such property was forfeited to the State of Illinois for the years 1871 and 1872, together with interest at ten per cent. and costs thereon, and upon which remain due and unpaid the taxes and special assessments for the year 1870, (embracing only the delinquent taxes and special assessments, together with the interest and costs thereon, if any, contained and set forth in the collector's books, with the warrants attached thereunto issued by the county clerk of Cook county, State of Illinois, for the year 1873, which now remain due and unpaid,) and showing the names of the owners so far as known, the proper description of the lands and lots, the valuation on which the taxes for the years 1873 and 1870 are extended, the amounts of each kind of tax for the year 1873, and each kind of tax and special assessment for the year 1870 charged against each parcel of land
153 or lot, and the amounts for which such lands and lots were forfeited to the State of Illinois for the years 1871 and 1872, and interrest and cost charged against each parcel of land or lot respectively, all of which taxes or special assessments so levied and assessed for said years and hereinafter set forth and enumerated,

and the cost and interest thereon, Henry B. Miller, county treasurer and *ex-officio* county collector of the taxes of Cook county, State of Illinois, has been unable to collect, which said delinquent list was heretofore, to wit, on the eighth day of August, A. D. 1874, duly reported to the county clerk of said county by said county collector, and duly filed in the office of said county clerk on that date.

Elston's Addition to Chicago, lot 6, block 50.

Valuation as equalized by the State board of equalization, year 1873, $2,391.

State tax	8 61
County tax	9 57
Town tax	1 09
Lincoln Park tax	7 56
Aggregate am't of taxes for A. D. 1873 as shown by previous columns, $26.83.	
Totals	26 83
Cost	40
Totals—amount of judgment	27 23
Total amount of judgment rendered	25 56

Remarks. A. GAGE.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Henry B. Miller, collector of the county of Cook, do
154 solemnly swear that the foregoing is a true and correct record of the delinquent lands and lots within the county of Cook upon which I have been unable to collect the taxes, special assessments, interest, printer's fees and costs charged thereon, as required by law, for the year or years therein set forth; that said taxes now remain due and unpaid, as I verily believe.

HENRY B. MILLER,
County Collector of Cook County, Illinois.

Subscribed and sworn to before me, this seventeenth day of August, A. D. 1874.

HERMANN LIEB, [SEAL.]
County Clerk of Cook County, Illinois.

STATE OF ILLINOIS, } ss:
County of Cook, }

Pleas before the Honorable Martin R. M. Wallace, sole presiding judge of the county court of Cook county, in the State of Illinois, at a term of said court begun and held at the court-house in Chicago, in said county, on the third Monday (being the seventeenth day) of August, in the year of our Lord one thousand eight hundred and seventy-four, and of the independence of the United States of America the ninety-ninth.

Court opened by proclamation.

Present thereat: Honorable Martin R. M. Wallace, judge of the county court of Cook county; Timothy M. Bradley, Sheriff of Cook county.

Attest: HERMANN LIEB,
Clerk of the County Court of Cook County.

155 In the matter of the application of HENRY B. MILLER, county treasurer and *ex-officio* collector of the revenue of Cook county, for judgment for the delinquent State, county, town, school, road, and park taxes, and special assessments, levied and assessed upon the lands and lots in the county of Cook and State of Illinois, for the year 1870, and for judgment for the delinquent State, county, town, school, road, and park taxes, and special assessments, and costs thereon (if any), contained in the collector's books, with the warrants attached thereunto, issued by the county clerk of Cook county, State of Illinois, for the year 1873, which now remain due and unpaid, and for judgment for the amounts for which lands and lots were forfeited to the State of Illinois for the years 1872 and 1871, together with interest, at ten per cent., and costs remaining due and unpaid thereon.

And now, on this day, comes into court Henry B. Miller, county treasurer and *ex-officio* collector of the revenue of Cook county, by Charles H. Reed, Esq., State's attorney, on behalf of the people of the State of Illinois, and also by John M. Rountree, esquire, county attorney of Cook county, and applies to the court for judgment for the delinquent State, county, town, school, road, and park taxes levied and assessed upon the lands and lots in the county of Cook, in the State of Illinois, (together with the special assessments, if any), contained in the collector's books, with the warrants thereunto attached, issued by the county clerk of Cook county, State of Illinois, for the year 1873, and costs thereon; also, for judgment for
156 the amounts for which lands and lots in the county of Cook aforesaid were forfeited to the State of Illinois for the State, county, town, school, road, and park taxes for the years 1872 and 1871, together with interest, at ten per cent., and costs remaining due and unpaid thereon; also, for judgment for the delinquent State, county, town, school, road, and park taxes, and special assessments levied and assessed upon the lands and lots in said county of Cook for the year 1870, the delinquent list of all said aforesaid delinquent taxes and special assessments, together with the amounts of said several taxes, assessments, interest, and costs remaining due and unpaid, being contained in twenty-five volumes, numbered from number one (1) to twenty-five (25) inclusive. And it appearing to the court and the court finding, from evidence presented, that due notice, as required by law, has been given of said application for judgment, it is ordered by the court that any and all persons desiring to object to the rendition of such judgment file their objection thereto in writing by 2 o'clock p. m. on Thursday, the 20th day of August instant.

M. R. M. WALLACE, *Judge.*

County Court of Cook County, August Term, A. D. 1874.

WEDNESDAY, *the 9th day of September, A. D.* 1874, *at* 10 *o'clock A. M.*

Court being in session.

Present: Honorable Martin R. M. Wallace, judge of the county court of Cook county; Timothy M. Bradley, sheriff of Cook county.

Attest: HERMAN LIEB,
Clerk of the County Court of Cook County.

157 In the matter of the application of HENRY B. MILLER, county treasurer and *ex-officio* collector of the revenue of Cook county, in the State of Illinois, for judgment for the delinquent State, county, town, school, road, and park taxes and special assessments, levied and assessed upon the lands and lots in the county of Cook and State of Illinois for the year 1870, and for judgment for the delinquent State, county, town, school, road, and park taxes and special assessments (if any), and costs thereon, contained in the collector's books, with the warrants attached thereunto, issued by the county clerk of Cook county, State of Illinois, for the year 1873, which remain due and unpaid, and for judgment for the amounts for which lands and lots in said county were forfeited to the State of Illinois for the taxes and assessments for the years 1872 and 1871, together with interest at ten per cent. and costs remaining due and unpaid thereon.

And now, on this ninth day of September, A. D. 1874, the same being one of the days of the August term, A. D. 1874, of this court, again comes Henry B. Miller, county treasurer and *ex-officio* collector of the revenue of Cook county, by John M. Rountree, esquire, county attorney of said county; also come the several parties, owners of and interested in the several lands and lots in the foregoing list described, who have heretofore severally filed objections herein to the rendition of judgment against said lands and lots in which they are interested respectively.

And the court having heard the evidence adduced and the
158 arguments of counsel, and having duly considered the same, and being now fully advised in the premises, it is ordered and considered by the court that judgment be, and is hereby, refused for seven thirty-sixths ($\frac{7}{36}$) of the amount in the foregoing list, designated as State tax for the year A. D. 1873.

And it is further considered and ordered by the court that all objections to the rendition of payment against the several lands and lots in the foregoing list described, opposite the description of which in said list the words "judgment refused" are written, there being nothing written after said words to limit or confine the same to any particular tax or special assessment or forfeiture, be and the same are hereby sustained, and judgment is hereby refused as to said several lands and lots.

It is further considered and ordered by the court that wherever in said list there is noted opposite the description of any land or lot "judgment refused" for any particular tax or special assessment or

forfeiture or costs, judgment is hereby refused against said land or lot for said tax or special assessment or forfeiture or costs as to which judgment is noted refused as aforesaid.

And it is further ordered that all other objections filed herein to the rendition of judgment against the lands and lots in the foregoing list described be, and the same are hereby, overruled.

And whereas due notice has been given of the intended application for judgment against said lands and lots, and no sufficient defense having been made, or cause shown, why judgment should not be entered against said lands and lots for the taxes, special assessments, forfeitures, interest, and costs, due and unpaid thereon
159 for the years therein set forth, except where judgment has been refused as aforesaid.

Therefore it is considered and ordered by the court that judgment be and is hereby entered against the aforesaid tract or tracts or lots of land, as the case may be, in favor of the people of the State of Illinois, for the sum annexed to the description of each, less any particular tax or assessment, forfeiture, or cost, for which judgment has been refused as aforesaid, being the amount of taxes, special assessments, forfeitures, interest, and costs due and unpaid severally thereon.

And it is ordered by the court that the said several tracts or lots of land, or so much of each of them as shall be necessary to satisfy the amount of taxes, special assessments, forfeitures, interest, and costs annexed to them severally, due and unpaid thereon, be sold as the law directs.

And it is further ordered that all parties desiring to appeal from said judgment file their appeal bond within twenty days from this date, and that all bills of exceptions be filed within sixty days from the date hereof.

And it is further ordered that all parties appealing from said judgment to the supreme court of the State of Illinois file their appeal bonds in the penal sum of five hundred dollars, with surety, to be approved by the clerk of this court, and that where appeal is taken to the circuit court of Cook county from the same, bond to be filed in double the amount of judgment appealed from, with surety, to be approved by the court.

M. R. M. WALLACE, *Co. Judge.*

160 *Process and Record of Sale on State and County Taxes of A. D. 1873, and Prior Years..*

Description—Elston's Add'n to Chicago, lot 6, block 50.
Amount of judgment for taxes levied in 1873, $25.16.
Totals amount of judgment, $25.56; costs, 40 cts.
When sold—Date, Oct. 27, 1874.
Name of purchaser, A. Gage.

Deed issued to Asahel Gage by Herman- Lieb, county clerk, September 6th, 1877. No. 1392.

161 STATE OF ILLINOIS, } ss:
County of Cook, }

County Court of Cook county, August Term, A. D. 1874.

WEDNESDAY, *the 9th day of September, A. D.* 1874—10 *o'clock, a. m.*

Court being in session.

Present: Hon. Martin A. M. Wallace, judge of the county court of Cook county; Timothy M. Bradley, sheriff of Cook county.

Attest: HERMANN LIEB.
Clerk of the County Court of Cook County.

In the matter of the application of Henry B. Miller, county treasurer and *ex-officio* collector of the revenue of Cook county, in the State of Illinois, for judgment for the delinquent State, county, town, school, road, and park taxes, and special assessments levied and assessed upon the lands and lots in the county of Cook, in the State of Illinois, for the year 1870, and for judgment for the delinquent State, county, town, school, road, and park taxes, and special assessments (if any) and costs thereon contained in the collector's books, with the warrants attached thereunto, issued by the county clerk of Cook county, State of Illinois, for the year 1873, which remain due and unpaid, and for judgments for the amounts for which lands and lots in said county were forfeited to the State of Illinois for the taxes and assessments for the year 1872 and 1871, together with the interest at ten per cent. and costs remaining due and unpaid thereon.

And now, on this ninth day of September, A. D. 1874, the same being one of the days of the August term, A. D. 1874, of this
162 court, again comes Henry B. Miller, county treasurer and *ex-officio* collector of the revenue of Cook county, by John M. Rountree, Esquire, county attorney of said county; also come the several parties, owners of, and interested in, the several lands and lots in the foregoing list described, who have heretofore severally filed objections herein to the rendition of judgments against said lands and lots in which they are interested, respectively.

And the court having heard the evidence adduced, and the arguments of counsel, and having duly considered the same, and being now fully advised in the premises, it is ordered and considered by the court that judgment be, and is hereby, refused for seven thirty-sixths ($\frac{7}{36}$) of the amount of the foregoing list, designated as State tax for the year A. D. 1873.

And it is further considered and ordered by the court that all objections to the rendition of judgment against the several lands and lots in the foregoing list described, opposite the description of which in said list the words "judgment refused" are written, there being nothing written after said words to limit or confine the same to any particular tax or special assessment or forfeiture, be, and the same are hereby, sustained, and judgment is hereby refused as to said several lands and lots.

It is further considered and ordered by the court that, wherever in said list there is noted opposite the description of any land or lot "judgment refused" for any particular tax or special assessment or forfeiture or costs, judgment is hereby refused against said land or lot for said tax or special assessment or forfeiture or costs, as to which judgment is noted refused as aforesaid.

And it is further ordered that all other objections filed herein to the rendition of judgment against the lands and lots in the
163 foregoing list described be, and the same are hereby, overruled.

And whereas due notice has been given of the intended application for judgment against said lands and lots, and no sufficient defence having been made or cause shown why judgment should not be entered against said lands and lots for the taxes, special assessments, forfeitures, interest, and costs due and unpaid thereon for the years herein set forth, except where judgment has been refused as aforesaid.

Therefore, it is considered and ordered by the court that judgment be, and is hereby, entered against the aforesaid tract or tracts or lots of land, as the case may be, in favor of the people of the State of Illinois, for the sum annexed to the description of each, less any particular tax or assessment, forfeiture, or cost, for which judgment has been refused as aforesaid, being the amount of taxes, special assessments, forfeitures, interest, and costs due and unpaid severally thereon.

And it is ordered by the court that the said several tracts or lots of land, or so much of each of them as shall be necessary to satisfy the amount of taxes, special assessments, forfeitures, interest, and costs annexed to them severally, due and unpaid thereon, be sold as the law directs.

And it is further ordered that all parties desiring to appeal from said judgment file their appeal bonds within twenty days from the date hereof.

And it is further ordered that all parties appealing from said judgment to the supreme court of the State of Illinois file their appeal bonds in the penal sum of five hundred dollars, with surety, to be approved by the clerk of this court, and that where appeal is taken to the circuit court of Cook county from the same, bond be filed in double the amount of judgment appealed from, with surety,
164 to be approved by the court.

M. R. M. WALLACE,
County Judge.

STATE OF ILLINOIS, }
County of Cook, } *ss:*

I, Hermann Lieb, clerk of the county court of Cook county, in the State of [Illinois] aforesaid, do hereby certify that the foregoing is a correct record of the tracts, parcels of land, and town lots in the county of Cook and State of Illinois, against which judgment was entered for delinquent taxes and special assessments of the years A. D. 1870 and A. D. 1873, and of the property "forfeited to the State"

for the years A. D. 1871 and A. D. 1872, together with interest and costs due and unpaid thereon, by the county court of Cook county, on the ninth day of September, A. D. 1874, and of the orders of judgment and sale made and entered by said court on the date aforesaid.

In testimony whereof, I have hereunto set my hand and affixed the seal of the county court of Cook county, at Chicago, in said county, this twenty-fourth day of September, A. D. 1874.

[SEAL.] HERMANN LIEB,
Clerk of the County Court of Cook County.

165 STATE OF ILLINOIS, } ss:
County of Cook, City of Chicago, }

Asahel Gage, of lawful age, being first duly sworn, doth depose and say, that he relies on the facts stated in this and other affidavits hereto annexed, and the certificate, as compliance with the provisions of the constitution and laws of this State in this behalf, and therefore says that he, this affiant, has complied with all the provisions of the constitution and laws of this State to entitle him or his assignee to a deed or deeds, and asks that a deed or deeds may be issued, as provided by law, on the land described in the annexed certificate of tax sale to this affiant.

ASAHEL GAGE.

Subscribed and sworn to, this 9th day of July, 1877, before me.

[SEAL.] AUGUSTUS N. GAGE,
Notary Public.

Affidavit. Occupant Served. No Assessee.

STATE OF ILLINOIS, } ss:
County of Cook, }

U. George Taylor, of lawful age, being duly sworn, says, that he resides in said county, and is the agent of Asahel Gage; that as such agent deponent, on the 21st day of June, A. D. 1876, served a notice, of which the annexed notice is a true copy, on Thomas Armstrong, by handing the same to and leaving the same with
166 him, said Thomas Armstrong, at Chicago, in said county; deponent is acquainted with the premises mentioned in said notice, and the person so served was the only person in possession thereof three months before the time of redemption from the sale mentioned in said notice expired, to wit, on the 21st day of June, A. D. 1876, and for more than thirty days previous and subsequent thereto, and said premises were not taxed in the name of any person; and deponent also served a copy of said notice on Bassett and Hammond, on June 16th, 1876.

U. GEORGE TAYLOR.

Sworn to, this 9th day of July, A. D. 1877, before me.

AUGUSTUS N. GAGE, [SEAL.]
Notary Public.

Notice of Sale for Tax.

To ——, or whom it may concern:

This is to notify you that on the 27th day of October, 1874, the undersigned purchased at a sale of lots and lands for taxes and special assessments, authorized by the laws of the State of Illinois, the following described real estate taxed in no name, to wit: Lot 6, in block 50, Elston's Addition to Chicago. Said taxes and special assessments were levied for the year 1873, and that the time of redemption thereof from said sale will expire on the 27th day of October, 1876.

ASAHEL GAGE.

Room 14, Portland Block, Chicago.

State and County Certificate of Sale for Taxes of A. D. 1873, *&c.*

No. 3683, volume 13, page 28.

167 STATE OF ILLINOIS, } ss:
Cook County, }

This is to certify that at the August term, A. D. 1874, of the county court of said Cook county, on the application of Henry B. Miller, county treasurer and *ex-officio* collector of the revenue of Cook county, for judgment of delinquent State, county, town, school, road, and park taxes, and special assessments, levied and assessed upon the lands and lots in the county of Cook, and State of Illinois, for the year 1870, and for judgment for the State, county, town, school, road, and park taxes, and special assessments, and costs thereon (if any), contained in the collector's books, with the warrants attached thereunto, issued by the county clerk of Cook county, State of Illinois, for the year 1873, which remain now due and unpaid, and for judgment for the amounts for which lands and lots were "forfeited to the State of Illinois" for the years 1872 and 1871, together with interest at ten per cent. and costs remaining due and unpaid thereon, and returned delinquent and unpaid by the town collectors of State and county taxes for said several years, pursuant to law, a judgment was entered against the following described lands, or lots for so much of the said taxes and special assessments as were found to be due thereon, and costs, being for the sum of twenty-five dollars and 56 cents, as follows, to wit:

For A. D.	1873	$25 16
" "	1872	
" "	1871	
" "	1870	
	Costs	40
	Total	$25 56

168 And in and by said judgment it was ordered by said court that said lands or lots, or so much thereof as should be sufficient to satisfy the amount of said judgment, be sold, as the law directs, to wit: Lot 6, block 50, in Ellston's Addition to Chicago, sec-

tion —, town —, range — east, of the third principal meridian, situated in said Cook county. And that in pursuance of the statute in such case made and provided, process was issued to said treasurer and *ex-officio* collector of said county to sell said lands or lots, or so much thereof as should be necessary to satisfy the said judgment.

That by virtue of said process said collector did, on the 28th day of September, A. D. 1874, open the sale upon said process, and said sale being duly continued from day to day by adjournments duly announced, and the same being reached in its order said collector did this day offer for sale, and did sell so much of said lands or lots as would pay the sum aforesaid; and that A. Gage became the purchaser of the whole of said lands or lots, and paid thereon the sum aforesaid, that being the least quantity of said lands or lots for which any person would pay the said amount due thereon. Now, therefore, in case the said lands or lots above sold are not redeemed in manner and form as the law directs within two years from the date hereof, the said purchaser, his heirs or assigns, will be entitled to receive a deed of the lands or lots above sold as by law directed. Unless the holder of this certificate takes out the deed, as entitled by law, and files the same for record within one year from and after the time for redemption expires, then this certificate shall,
169 from and after the expiration of such one year, be absolutely null.

If the holder of this certificate shall be prevented from obtaining a deed by injunction or order of any court, or by refusal of the clerk to execute the same, the time he is so prevented shall be excluded from the computation of such time.

In witness whereof, I have hereunto subscribed my name and affixed the seal of said county court, at Chicago, in said county, this 27th day of October, A. D. 1874.

HERMANN LIEB,
Clerk of the County Court.

Countersigned:
[SEAL.] H. B. MILLER,
Treasurer and Ex-officio Collector of Cook County.

No. 1392. Filed and deed issued to Ashael Gage, September 16th, 1877.

H. LIEB, *Clerk.*

170 STATE OF ILLINOIS, }
County of Cook, } ss:

I, E. F. C. Klokke, clerk of the county court of Cook county, in the State aforesaid, do hereby certify that the foregoing is a true and correct copy of the Cook county delinquent tax list as advertised in the "Inter-Ocean," on the 24th day of July, A. D. 1874, by the county treasurer and *ex-officio* collector of the revenue of Cook county, Illinois; also of the county collector's delinquent lists; the orders and the judment of the county court of Cook county, Illinois; the judgment record; the precept and record of sale for the State, county, and other taxes for the year 1873 and prior years, and the

certificate of sale and notices and affidavits upon which deed was issued, so far as the same relates to the property described in the foregoing copy; all of which appears from the records and files of my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said county court, at my office, in the city of Chicago, in said county, this 23d day of July, A. D. 1880.

[SEAL.]

E. F. C. KLOKKE,
Clerk of the County Court.

171 EXHIBIT "2"—GAGE.

STATE OF ILLINOIS, }
Cook County, } ss:

Whereas at a public sale of real estate for the non-payment of taxes, made in the county aforesaid on the twenty-seventh (27th) day of October, A. D. 1874, the following-described real estate was sold, to wit:

Lot six (6), in block fifty (50), in Elston's Addition to Chicago, and sublot six (6) and east five (5) feet of sublot seven (7), in Roscap's subdivision of part of lots twelve (12) and thirteen (13), in north addition to Chicago, and sublots fifty-nine (59) and sixty (60) in subdivision of the west half (½) of lots one hundred twenty (120) and one hundred twenty-five (125), all of lots one hundred twenty-three (123), one hundred twenty-four (124), one hundred twenty-seven (127) to one hundred thirty-four (134) and one hundred thirty-seven (137), in Branson's Addition to Chicago.

172 And whereas the same not having been redeemed from said sale, and it appearing that the holder of the certificate of purchase of said real estate has complied with the laws of the State of Illinois necessary to entitle him to a deed of said real estate:

Now, therefore, know ye that I, Hermann Lieb, county clerk of said county of Cook, in consideration of the premises and by virtue of the statutes of the State of Illinois in such cases provided, do hereby grant and covey unto Asahel Gage, of the city of Chicago, in the county of Cook and State of Illinois, his heirs and assigns, forever, the said real estate hereinbefore described, subject, however, to any redemption provided by law.

The following provision of the revised statutes of said State of Illinois, being section 225 of chapter 120, is recited pursuant to law:

"Unless the holder of the certificate for real estate purchased at any tax sale under this act takes out the deed as entered by law, and files the same for record within one year from and after the
173 time for redemption expires, the said certificate or deed, and the sale on which it is based, shall, from and after the expiration of such one year, be absolutely null.

If the holder of such certificate shall be prevented from obtaining such deed by injunction or order of any court, or by the refusal of the clerk to execute the same, the time he is prevented shall be excluded from the computation of such time.

Given under my hand and the seal of our court, this sixth day of September, A. D. 1877.

[SEAL.] HERMANN LIEB,
County Clerk.

STATE OF ILLINOIS, }
County of Cook, City of Chicago, } *ss:*

On this sixth day of September, A. D. 1877, before me, Frances Carnienti, a notary public in and for said county, personally appeared Hermann Lieb, county clerk of said county of Cook, personally known to me to be the real person whose name is subscribed to the above deed as having executed the same, and acknowledged
174 that he executed the same as such county clerk voluntarily and freely for the uses and purposes therein set forth.

Given under my hand and notarial seal the day and year aforesaid.

[SEAL.] FRANCES CARNIENTI,
Notary Public.

Endorsed: No. 1392. Tax deed. Hermann Lieb, county clerk of Cook county, Illinois, to Asahel Gage. State of Illinois, Cook county. No. 149,471. This instrument was filed for record on the 7th day of Sept., A. D. 1877, at the hour of 11 o'clock a. m., and duly recorded in book 777 of records, at page 19. Jas. W. Brockway, recorder of deeds. Exhibit "2"—Gage.

175 EXHIBIT "3."—GAGE.

Filed May 1st, 1877. HERMANN LIEB, *Clerk.*

A list of delinquent lands and lots in the county of Cook, and State of Illinois, upon which remain due and unpaid the taxes and special assessments levied and assessed for the year 1876 and prior years, and upon which remain due and unpaid the amounts for which said lands and lots had been previously forfeited to the State, and which remained unpaid on the first day of November, A. D. 1876, and ten per cent. interest, printer's fees, and other costs added to said amounts, and upon which remain due and unpaid back taxes of 1875 and prior years added, (embracing only the delinquent taxes and special assessments, together with the interest, printer's fees, and other costs thereon, if any, contained and set forth in the collector's books, with the warrants attached thereto, issued by the county clerk of said county for the year 1876, which now remain due and unpaid), and showing the names of the owners thereof, so far as known, the proper description of the lands and lots, the valuation on which the taxes are extended, the amount of each kind of tax and assessment, and interest and cost, if any, against each parcel of land or lot, and the total amount charged against each parcel of land or lot respectively, all of which taxes and special assessments so levied and assessed for said years, and hereinafter set forth and enumerated, and the interest and costs thereon, Louis C. Huck, county trersurer and *ex-officio* county collector of the taxes of Cook county, State of Illinois, has been unable to collect, and which said list is this day reported to the county clerk.

176–177

332. The following (county collector's delinquent list) is a correct list of taxable real estate, lands, lots, and blocks, in the town of North Chicago, in the county of Cook, and State of Illinois, showing the amount of the annual taxes for the year A. D. 1876 due thereon, and showing the "back taxes of other years" due thereon, and also showing the amounts due on lands and lots "previously forfeited to the State," and remaining unpaid, upon the first day of November, A. D. 1876, with interest added, and printer's fees due thereon, as shown in the respective colum-s, which said taxes, back taxes of other years, forfeitures, interest, and printer's fees the county treasurer and *ex officio* collector of Cook county, Illinois, has been unable to collect, and which now remains due and unpaid:

Names.	Description. Part of section, lot, or block.	Lot.	Block.		Valuation as equalized by State board of equalization.	State tax.	County tax.	City taxes of the city of Chicago.	Town tax.	Lincoln Park tax.	Aggregate tax of A. D. 1876.	Printer's fees.	Aggregate of back tax and forfeitures.	Totals.	Remarks.
Elston's Addition to Chicago.	Re-subdivision of	----	50	----------	$2,402	$6 78	$17 78	$57 84	$0 80	$7 52	$90 67	------	-------	$224 36	
		6	"	Forfeitures	-------	14 88	28 29	63 91	3 34	22 97	------	$0 30	$133 69		

178 STATE OF ILLINOIS, } ss:
Cook County, }

I, Louis C. Huck, collector of the county of Cook, do solemnly swear that the foregoing is a true and correct record of the delinquent lands and lots within the county of Cook upon which I have been unable to collect the taxes and special assessments, interest, and printer's fees charged thereon, as required by law, for the year or years therein set forth; that said taxes now remain due and unpaid, as I verily believe.

LOUIS C. HUCK,
Collector of Cook County, Illinois.

Subscribed to and sworn to before me, this 11th day of May, A. D. 1877.

HERMANN LIEB,
County Clerk.

Cook County Delinquent Tax List.

OFFICE OF THE COUNTY TREASURER AND EX-OFFICIO
COUNTY COLLECTOR, COOK COUNTY, ILLINOIS,
CHICAGO, *May 18th*, 1877.

The following list, the caption of which is, "List Number One," is a list of delinquent lands and lots in the county of Cook, and State of Illinois, upon which remain due the taxes and special assessments levied and assessed for the year 1876 and prior years, and upon which remain due and unpaid the amounts for which said lands and lots had been previously forfeited to the State, and which remained unpaid on the first day of November, A. D. 1876, and ten per cent. interest and printer's fees added to said amounts, and upon which remain due and unpaid back taxes of 1875 and prior years added, (embracing only the delinquent taxes and special assessments, together
179 with the interest and printer's fees, if any, contained and set forth in the collector's books, with the warrants attached thereto, issued by the county clerk of said county for the year 1876, which now remain due and unpaid,) together with the names of the owners thereof, so far as known, and the total amount due and unpaid on each tract of land and lot.

"*List Number One.*"

EXPLANATORY.—In this list the figures in the column head- "y'r" denote the year for which the tax is due, the amount of which tax being set down to the right of said figures. The letters "for." are an abbreviation of the word forfeitures, and denote that the amounts set down to the right of same are the amounts due on said lands and lots previously forfeited to the State and remaining unpaid on the first day of November, 1876. The figures in the column headed "total tax" represent the total amount of taxes due thereon respectively.

North Chicago.

Elston's Addition to Chicago.

Name.	L't.	Bl'k.	Y'r.		Total tax.
Resub of		50			
	6	do.	1876	90 67	
	6	do.	For.,	133 69	
					$224 36

Public notice is hereby given that the undersigned, county treasurer and *ex-officio* county collector of Cook county, State of Illinois, will apply to the county court of said county, at the June term thereof, to commence on the second Monday in June, A. D. 1877, being the eleventh (11th) day of June, A. D. 1877, for judgment against the delinquent lands, lots, and real estate described
180 in the foregoing list, the caption of which is "List Number One," for the taxes and special assessments for the year A. D. 1876 and previous years, and costs due thereon, and for the amounts for which said property had been forfeited to the State of Illinois for taxes and assessments previous to the first day of November, A. D. 1876, and remaining due and unpaid on said 1st day of November, together with ten per cent. interest and costs due thereon, and for back taxes for the year 1875 and prior years added, and costs due thereon, and for an order to sell said lands, lots, and real estate for the satisfaction thereof; and also that on the sixth Monday next succeeding the second Monday in June, A. D. 1877, being the twenty-third (23rd) day of July, A. D. 1877, at the hour of ten (10) o'clock a. m., all the lands, lots, and real estate described in the said "List Number One," against which judgment shall be rendered, and for the sale of which an order shall be made, will be exposed to public sale at the building where the county court is held in said county, to wit, the county building, situate on the northwest corner of Dearborn avenue and Michigan street, in the city of Chicago, in said county of Cook, for the amount of taxes, assessments, interests, and costs due thereon.

LOUIS C. HUCK,
County Treasurer and ex-officio County Collector of Cook County, Illinois.

Dated Chicago, May 18, 1877.

I, William Penn Nixon, publisher of the Inter-Ocean, do hereby certify that the foregoing lists of delinquent lands and lots contained in the newspaper, "The Inter-Ocean," to which this certifi-
181 cate is attached, which said lists are headed respectively "List Number One," "List Number Two," and "List Number Three," with notices thereto attached, were published and advertised once in "The Inter-Ocean," a daily newspaper published in Cook county, State of Illinois, and the whole of said advertisement was contained in one edition of said newspaper, the said newspaper being a newspaper of general circulation throughout said county, and that the date of the paper containing the same was the 18th day of May, A.

D. 1877; that said delinquent lists and notices have been published for the time required by law.

In witness whereof I have hereunto set my hand, this 31st day of May, A. D. 1877.

WM. PENN NIXON,
Publisher of the Inter-Ocean.

STATE OF ILLINOIS, } ss:
Cook County, }

I, William Penn Nixon, do solemnly, sincerely, and truly declare and affirm that I am the publisher of "The Inter-Ocean," a daily newspaper printed in said county of Cook, in the State of Illinois, and of general circulation throughout said county; that the foregoing certificate by me subscribed is true.

WM. PENN NIXON.

Subscribed, declared, and affirmed before me, this 31st day of May, A. D. 1877.

JOHN FORSYTHE, [SEAL.]
Notary Public.

Filed June 11th, 1877.

H. LIEB, *Clerk.*

182 Record of a list of delinquent lands and lots in the county of Cook, and State of Illinois, upon which remain due and unpaid the taxes and special assessments levied and assessed for the year 1876 and prior years, and upon which remain due and unpaid the amounts for which said lands and lots had been previously forfeited to the State, and which remained unpaid on the 1st day of November, A. D. 1876, and ten per cent. interest, printer's fees, and other costs added to said amounts, and upon which remain due and unpaid back taxes of 1875 and prior years added, (embracing only the delinquent taxes and special assessments, together with the interest, printer's fees, and other costs thereon, if any, contained and set forth in the collector's books, with the warrants attached thereto, issued by the county clerk of said county for the year 1876, which now remain due and unpaid,) and showing the names of the owners thereof so far as known, the proper description of the land and lots the valuation on which the taxes are extended, the amount of each kind of tax and assessment, and interest and cost, if any, against each parcel of land or lot, and the total amount charged against each parcel of land or lot respectively; all of which taxes and special assessments so levied and assessed for said years, and hereinafter set forth and enumerated, and the interest and costs thereon, Louis C. Huck, county treasurer and *ex-officio* county collector of the taxes of Cook county, State of Illinois, has been unable to collect, and which said list is this day reported to the county clerk.

183–184 426. The following is a correct record of the county collector's delinquent list of taxable real estate, lands, lots, and blocks, in the town of North Chicago, in the county of Cook, and State of Illinois, upon which the taxes for the year 1876, together with the addition of "back taxes" and "forfeiture to State" remain due and unpaid, as therein set forth.

Names.	Description. Part of section, lot, or block.	Lot.	Block.		Valuation as equalized by State board of equalization.	State tax.	County tax.	City tax of city of Chicago.	Town tax.	Lincoln Park tax.	Aggrigate tax of 1876.	Printer's fees.	Aggregate back tax and forfeitures.	Totals.	Costs.	Total amounts of judgment.	Remarks.
Elston's addition to Chicago.	Re-subdivision of.	----	50														
		6	"	-------	$24 02	$6 73	$17 78	$57 84	$0 80	$7 52	$90 67	------	-------	$224 36	$0 53	$224 89	A. Gage.
				Forfeitures.	------	14 88	28 29	63 91	3 34	22 97	------	$0 30	$133 69				

185 STATE OF ILLINOIS, } ss:
Cook County, }

I, Louis C. Huck, collector of the county of Cook, do solemnly swear that the foregoing is a true and correct record of the delinquent lands and lots within the county of Cook upon which I have been unable to collect the taxes and special assessments, interest, and printer's fee, and other costs charged thereon, as required by law, for the year or years therein set forth; that said taxes now remain due and unpaid as I verily believe.

LOUIS C. HUCK,
Collector of Cook County, Illinois.

Subscribed to and sworn to before me, this 11th day of June, A. D. 1877.

HERMANN LEIB, [SEAL.]
County Clerk.

STATE OF ILLINOIS, } ss:
Cook County, }

Pleas before the Honorable Martin R. M. Wallace, sole presiding judge of the county court of Cook county, in the State of Illinois, at a term of said court begun and held at the court-house, in Chicago, in said county, on the second Monday (being the eleventh day) of June, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States of America the one hundred and first.

Present thereat: Honorable Martin R. M. Wallace, judge of the county court of Cook county.

Attest: HERMAN LEIB,
186 *Clerk of the County Court of Cook County.*

Court opened by proclamation.

In the matter of the application of LOUIS C. HUCK, county treasurer and *ex-officio* collector of the revenue of Cook county, in the State of Illinois, for payment for the delinquent State, county, town, school, road, city, village, park, and corporation taxes and assessments levied and assessed upon the lands and lots in the county of Cook, in the State of Illinois, for the year 1876, and for the back taxes and forfeitures to the State, together with interest, printer's fees, and costs due and unpaid thereon.

And now, on this day, comes into court here Louis C. Huck, county treasurer and *ex-officio* collector of the revenue of Cook county, in the State of Illinois, by Luther Laflin Mills, State's attorney, on behalf of the people of the State of Illinois, and by John M. Rountree, Esquire, county attorney of Cook county, and Messrs. Bonfield and Adams, attorneys for the city of Chicago, and applies to the court for judgment for the delinquent State, county, town, school, road, city, village, park, and corporation taxes and assessments levied and assessed upon the lands and lots in the county of Cook,

and State of Illinois, for the year 1876, and for judgment for the amounts for which lands and lots were forfeited to the State of Illinois for unpaid taxes at the tax sale for taxes of 1875, together with interest at ten per cent. and costs thereon, and for judgment for back taxes due and unpaid thereon. The record of the delinquent list of all said delinquent taxes, assessments, forfeitures, back
187 taxes, interest and printer's fees and costs being contained in thirty-six (36) volumes, numbered from (1) to thirty-six (36), and hereinafter following.

And it appearing to the court, and the court finding from evidence presented, that due notice as required by law has been given of this application for judgment, it is ordered by the court that any and all persons desiring to object to the rendition of such judgment file their objections thereto in writing by the coming in of this court, at 10 o'clock a. m., on Monday, the eighteenth day of June, instant.

M. R. M. WALLACE,
Co Judge.

County Court of Cook County. June Term, A. D. 1877.

MONDAY, *June 18th, A. D.* 1877.

Court being in session.
Present: Same as on Monday last.

In the matter of the application of LOUIS C. HUCK, county treasurer and *ex-officio* collector of the revenue of Cook county, in the State of Illinois, for judgment for the delinquent State, county, town, school, road, city, village, park, and corporation taxes and assessments levied and assessed upon the lands and lots in the county of Cook and State of Illinois for the year 1876, and for the back taxes and forfeitures to the State, together with interest, printer's fees, and costs due and unpaid thereon.

This day again comes the said Louis C. Huck, county treasurer and *ex-officio* collector of the revenue of Cook county, by John M. Rountree, his attorney, and on his motion for cause shown, it
188 is ordered that the hearing of said application for judgment be and the same is hereby continued to the ninth day of July, A. D. 1877, at 10 o'clock a. m. Whereupon Messrs. John P. Wilson, John Borden, and William Hopkins, attorneys on behalf of the parties who have filed in this court objections to the rendition of such judgment, and who now appear in court by their said attorneys, except to the order of continuance.

M. R. M. WALLACE,
Co. Judge.

STATE OF ILLINOIS, } ss:
Cook County, }

Pleas before the Honorable Martin R. M. Wallace, sole presiding

judge of the county court of Cook county, in the State of Illinois, at a term of said court begun and held at the court house in Chicago, in said county, on the second Monday (being the ninth day) of July, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States of America the one hundred and second.

Present thereat: Honorable Martin R. M. Wallace, judge of the county court of Cook county; Charles Kern, sheriff of Cook county.

Attest: HERMANN LIEB,
Clerk of the County Court of Cook County.

Court opened by proclamation.

In the matter of the application of LOUIS C. HUCK, county treasurer and *ex-officio* collector of the revenue of Cook county, in the
189 State of Illinois, for judgment for the delinquent State, county, town, school, road, city, village, park, and corporation taxes and assessments levied and assessed upon the lands and lots in the county of Cook, in the State of Illinois, for the year 1876, and for the back taxes and forfeitures to the State, together with interest, printer's fees, and costs due and unpaid thereon.

And now, this day, again comes the said Louis C. Huck, county treasurer and *ex officio* collector of the revenue of Cook county, in the State of Illinois, by John M. Rountree, his attorney, and this application having been continued for hearing from the June term, A. D. 1877, of this court, the objections filed herein to the rendition of judgment against the lands and lots in the foregoing list described being now brought on for hearing, now also come Thomas J. Walsh, Edward Robey, John P. Wilson, William Hopkins, William Borden, and Harrison and Whitehead, attorneys, and move the court for leave to file objections to the rendition of judgment in said cause, and the rule entered by this court on Monday, the eleventh day of June, A. D. 1877, requiring all parties desiring to object to the rendition of judgment in said cause to file their objection thereto in writing by the coming in of this court, at 10 o'clock A. M. on Monday, the eighteenth day of June, A. D. 1877, having expired, it is therefore ordered by the court that said notice be, and the same is hereby, overruled.

Whereupon said attorneys each except to the said order.

And it is ordered that default be entered against all the real estate in the foregoing list described as to which no objections have been filed.

190 And on motion of John M. Rountree, county attorney, it is hereby ordered that the collector's warrants for the tax of the year 1876, and the clerk's record of the delinquent list for the taxes of said year be, and the fame are hereby, amended as follows, to wit, by inserting in lieu of the description "lots 1 to 7, inclusive, in block 23, Glencoe," and the amount of back taxes opposite the same, the following, to wit:

Glencoe.

Lot	3,	block	23--	$21 19
"	4,	"	" --	2 27
"	5,	"	" --	2 27
"	6,	"	" --	2 27
N. $\frac{2}{3}$	7,	"	" --	1 58
S. $\frac{1}{3}$	7,	"	" --	2 83

And by inserting in lieu of the description "lots 8 to 18, block 23, Glencoe," and the amount of back taxes opposite the same, the following, to wit:

Lot	8,	block	23--	$37 76	S. $\frac{1}{3}$	lot	14,	block	23-- $2 83
"	9,	"	" --	6 04	N. $\frac{2}{3}$	"	"	"	" -- 1 58
"	10,	"	" --	6 04		"	15,	"	" -- 2 27
"	11,	"	" --	6 04		"	16,	"	" -- 2 27
"	12,	"	" --	6 04		"	17,	"	" -- 2 27
"	13,	"	" --	6 04		"	18,	"	" -- 2 27

And it is further ordered by the court that the objections filed herein to the rendition of judgment against said real estate by John A. Owen, objector, be, and the same are hereby, overruled.

Whereupon said Owen excepts to the order of the court aforesaid.

M. R. M. WALLACE,
Co. Judge.

191 County Court of Cook County. July Term, A. D. 1877.

THURSDAY, *July 12th, A. D.* 1877.

Court being in session.

Present: Same as on the 9th instant.

In the matter of the application of LOUIS C. HUCK, county treasurer and *ex-officio* collector of the revenue of Cook county, in the State of Illinois, for judgment for the delinquent State, county, town, school, road, city, village, park, and corporation taxes and assessments levied and assessed upon the lands and lots in the county of Cook, in the State of Illinois, for the year 1876, and for the back taxes and forfeitures to the State, together with interest, printer's fees, and costs due and unpaid thereon.

And now, to wit, on this twelfth day of July, A. D. 1877, the same being one of the days of the July term, A. D. 1877, of this court, again comes Louis C. Huck, county treasurer and *ex-officio* collector of the revenue of Cook county, by John M. Rountree and Francis Adams, his attorneys. Also come the several parties, owners of and interested in the several lands and lots in the foregoing list described, who have heretofore severally filed objections herein to the rendition of judgment against the said lands and lots in which they are interested respectively. And the court having considered the several objections aforesaid, and having heard the evidence adduced and the arguments of counsel, and having duly considered the same, and being now fully advised in the premises, it is considered and ordered

by the court that all objections to the rendition of judgment
192 against the several lands and lots in the foregoing list described, opposite the description of which lands and lots in said list the words "judgment refused" appear, there being nothing written after said words to limit or confine the same to any particular tax, or assessment, or forfeiture, or costs, be and the same are hereby sustained, and judgment is hereby refused as to said several lands and lots. And it is further considered and ordered by the court that wherever in said list there is marked or noted opposite the description of any land or lot "judgment refused" for any particular tax or assessment, or forfeiture, or costs, or any portion thereof, judgment is hereby refused against said land or lot for said particular tax, or assessment, or forfeiture, or costs, or such portion thereof, as to to which judgment is noted refused as aforesaid.

And it is further noted that all other objections filed herein to the rendition of judgment against the lands and lots in the foregoing list described be and the same are hereby overruled. And whereas due notice has been given of the intended application for judgment against said lands and lots, and no sufficient defense having been made or cause shown why judgment should not be entered against said lands and lots for the taxes, assessments, forfeitures, back taxes, interest, and costs due and unpaid thereon for the years herein set forth, except where judgment has been refused as aforesaid, therefore it is considered and ordered by the court that judgment be and is hereby entered against the aforesaid tracts or lots of land, or parts of tracts or lots (as the case may be), for the sum annexed to the description of each, less any particular tax, or assessment, or
193 forfeiture, or back taxes, or interest, or costs for which judgment has been refused as aforesaid, being the amount of taxes, assessments, forfeitures, back taxes, interest, and costs due and unpaid severally thereon. And it is ordered by the court that the said several tracts or lots of land, or so much of each of them as shall be necessary to satisfy the amount of taxes, assessments, forfeitures, back taxes, interest, and costs due and unpaid severally thereon, be sold as the law directs.

M. R. M. WALLACE,
Co. Judge.

194–195 *Process and Record of Sale on State, County, and City Taxes of A. D.* 1876, *and on Back Taxes and Forfeitures to State of* 1875 *and Prior Years.*

Names.	Description.	Lot.	Block.	Amount of judgment for taxes levied in 1876.	Am't of judgment for back taxes and forfeitures to State of 1875 and prior years.	Costs.	Total amount of judgment.	When sold. Date.	Name of purchaser.	
Elston's Addition to Chicago.	Re-sub. of	---- 6	50 ----	$90 67	$133 69	$0 53	$224 89	Oct. 3, 1877	A. Gage	Enjoined from issuing deed by writ issued out of the circuit court of the U. S., Oct. 10th, 1879. E. F. C. Klokke, clerk. Box No. 47. Injunction dissolved November 29th, A. D. 1879. Deed issued to Asahel Gage by E. F. C. Klokke, county cl'k, February 4th, A. D. 1880. No. K, 1027.

196 STATE OF ILLINOIS, } ss:
Cook County, }

Circuit Court Cook County. July Term, A. D. 1877.

THURSDAY, *July 12th, A. D.* 1877.

Court being in session.

Present thereat: Hon. Martin R. M. Wallace, judge of the county court of Cook county; Charles Kern, sheriff of Cook county.

Attest: HERMANN LIEB,
Clerk of the County Court of Cook County.

In the matter of the application of LOUIS C. HUCK, county treasurer and *ex-officio* collector of the revenue of Cook county, in the State of Illinois, for judgment for the delinquent State, county, town, school, road, city, village, park, and corporation taxes and assessments levied and assessed upon the lands and lots in the county of Cook, in the State of Illinois, for the year 1876 and for the back taxes and forfeitures to the State, together with interest, printer's fees, and costs due and unpaid thereon.

And now, to wit, on this twelfth day of July, A. D. 1877, the same being one of the days of the July term, A. D. 1877, of this court, again comes Louis C. Huck, county treasurer and *ex-officio* collector of the revenue of Cook county, by John M. Rountree and Francis Adams, his attorneys, also come the several parties owners of and interested in the several lands and lots in the foregoing list described, who have heretofore severally filed objections herein to the rendition of judgment against the said lands and lots in which they are interested respectively. And the court having considered the
197 several objections aforesaid, and having heard the evidence adduced and the arguments of counsel, and having duly considered the same, and being now fully advised in the premises, it is considered and ordered by the court that all objections to the rendition of judgment against the several lands and lots in the foregoing list described, opposite the description of which lands and lots in said list the words "judgment refused" appear, there being nothing written after said words to limit or confine the same to any particular tax or assessment, or forfeiture, or costs, be, and the same are hereby, sustained, and judgment is hereby refused as to said several lands and lots.

And it is further considered and ordered by the court that wherever in said list there is marked or noted opposite the description of any land or lot "judgment refused" for any particular tax or assessment, or forfeiture, or costs, or any portion thereof, judgment is hereby refused against said land or lot for said particular tax or assessment, or forfeiture, or costs, or such portion thereof as to which judgment is noted refused as aforesaid.

And it is further ordered, that all other objections filed herein to the rendition of judgment against the lands and lots in the foregoing list described be, and the same are hereby, overruled. And whereas due notice has been given of the intended application for judgment against said lands and lots, and no sufficient defense having been

made or cause shown why judgment should not be entered against said lands and lots for the taxes, assessments, forfeitures, back taxes, interest, and costs due and unpaid thereon for the years herein set forth, except where judgment has been refused as aforesaid; therefore it is considered and ordered by the court that judgment be, and
198 is hereby, entered against the aforesaid tracts or lots of land, or parts of tracts or lots (as the case may be), for the sum annexed to the description of each, less any particular tax or assessment, or forfeiture, or back taxes, or interest, or costs for which judgment has been refused as aforesaid, being the amount of taxes, assessments, forfeitures, back taxes, interest, and costs due and unpaid severally thereon.

And it is ordered by the court, that the said several tracts or lots of land, or so much of each of them as shall be necessary to satisfy the amount of taxes, assessments, forfeitures, back taxes, interest, and costs due and upaid severally thereon, be sold, as the law directs.

M. R. M. WALLACE,
County Judge.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Hermann Lieb, clerk of the county court of Cook county, in the State aforesaid, do hereby certify that the foregoing is a correct record of the tracts, parcels of land, and town lots, in the county of Cook and State of Illinois, against which judgment was entered for delinquent taxes and special assessments of the year 1876 and back taxes and forfeitures to the State of the year 1875, etc., together with interest and costs due and unpaid thereon by the county court of Cook county, on the twelfth day of July, A. D. 1877, and of the orders of judgment and sale made and entered by said court on the date aforesaid.

In testimony whereof, I have hereunto set my hand and affixed the seal of the county court of Cook county, at Chicago, in said county, this twenty-third day of July, A. D. 1877.

[SEAL.] HERMAN- LIEB,
Clerk of the County Court of Cook County.

199 STATE OF ILLINOIS, } ss:
County of Cook, }

Augustus N. Gage, of lawful age, being first duly sworn, doth depose and say that he resides in said county; that he is the agent and attorney of Asahel Gage, who purchased the land or lot described in the certificate of purchase hereto attached at the tax sale mentioned therein; that said certificate hereto attached is the identical certificate of purchase issued to said Asahel Gage at said tax sale, and that the said Asahel Gage is the legal holder thereof; that more than three months, and less than five months, before the time for redemption of the land described in the said annexed certificate from the sale set forth therein expired, the said Asahel Gage published in the Chicago Daily Evening Journal, a newspaper of general circulation in said county and State, printed and published in the city of Chi-

cago, in said county and State, a notice of the said purchase at said tax sale, which said notice was inserted and published in said newspaper three times, to wit, on the second and on the third and on the fourth days of June, A. D. 1879, the first time of such insertion being not more than five months, and the last time being not less than three months, before the time of said redemption expired. And deponent further says that the printed slip filed with the county clerk of said county, being a copy of said notice cut from one of said newspapers, and the certificate of publication thereof as aforesaid by the publisher of said newspaper, are filed as further evidence of said publication as aforesaid.

And this affiant says that said Asahel Gage served, or caused
200 to be served, written or printed, or partly written and partly printed, notices of purchase at said tax sale, as in other affidavits hereto attached more fully set forth, on every person in actual possession or occupancy of such land or lot, and also the person in whose name the same was taxed or specially assessed, if upon diligent enquiry he could be found in said county; and a reasonable notice was given to the owners or parties interested in said land or lot at least three months before the expiration of the time of redemption on such sale, and that said notices stated when he purchased the land or lot, in whose name taxed, the description of the land or lot he has purchased, for what year taxed or specially assessed, and when the time of redemption will expire. And this affiant says that he has compared the affidavits hereto attached with the original memoranda of service of the respective parties making the same, and that the same are correct according to the original memoranda of service as aforesaid.

And this affiant says that the said Asahel Gage was enjoined from taking a deed upon said land and lot by an injunction issued out of the circuit court of the United States for the northern district of Illinois, in a cause entitled Harmon Pumpelly *vs.* Asahel Gage *et al.*, which said injunction was by said court heretofore dissolved, as will more fully appear by reference to the certified copy of said order dissolving said injunction, hereto attached, marked "Exhibit One—A. N. G."

And this affiant says that the said land or lot has not been redeemed from the force and effect of said sale within the time and in the manner prescribed by law, and that he and the said Asahel Gage rely on the facts stated in this and other affidavits, and the said cer-
tificate of purchase hereto annexed, and the said publication
201 notice and certificate thereof, and compliance with the provisions of the constitution and laws of the State of Illinois in this behalf. And this affiant particularly says that all the conditions of section 216 of an act of the Legislature of the State of Illinois, entitled "An act for the assessment of property and for the levy and collection of taxes," approved March 30th, 1872, and in force July 1st, 1872, have been strictly complied with, and, therefore, says that the said Asahel Gage has caused a reasonable notice to be given to the owners or parties interested, by publication or otherwise, of the fact of the sale of the property described in the notice hereto at-

tached for the taxes or assessments therein described, and when the time of redemption would expire, and has complied with all the provisions of the constitution and laws of the State of Illinois to entitle the said Asahel Gage to a deed or deeds of conveyance, and asks that a deed or deeds of conveyance, vesting in said Asahel Gage the title to the land or lot described in the said annexed certificate of purchase, may be issued, as provided by law, to said Asahel Gage.

AUGUSTUS N. GAGE.

Subscribed and sworn to, this 23rd day of January, 1880, before me.

E. D. COOKE, [SEAL.]
Notary Public.

STATE OF ILLINOIS, } ss:
De Witt County, }

W. R. Morley, of lawful age, being duly sworn, says that he resides in said county and is the agent of Asahel Gage; that as such agent deponent, on the 18th day of February, A. D. 1879, being at least three months before the expiration of the time of redemp-
202 tion on the sale mentioned in annexed notice, served a notice, of which the annexed notice is a true copy, on Niel Gilespie, by handing the same to and leaving the same with him at the premises described in said notice, on Cherry street, south of North avenue, personally, at Chicago, in the county of Cook. Deponent is acquainted with the land or lot mentioned in said notice, and the person so served was the only person in actual possession or occupancy of said land or lot at least three months before the expiration of the time of redemption on the sale mentioned in said notice, to wit, on the eighteenth day of February, A. D. 1879, and said land or lot was not taxed or specially assessed in the name of any person.

W. R. MORLEY.

Sworn to, this 12th day of December, A. D. 1879, before me.

Z. T. LILLARD. [SEAL.]
Notary Public.

STATE OF ILLINOIS, } ss:
County of Cook, }

Taylor A. Snow, of lawful age, being duly sworn, says that he resides in said county, and is the agent of Asahel Gage; that as such agent, deponent on the 4th day of March, A. D. 1879, being at least three months before the expiration of the time of redemption on the sale mentioned in annexed notice, served a notice, of which the annexed notice is a true copy, on Mrs. Niel Gilespie by handing the same, and leaving the same with her personally, on the premises described in the annexed notice, at Chicago, in said county. Depo-
nent is acquainted with the land or lot mentioned in said
203 notice, and the person so served was the only person in actual possession or occupancy of said land or lot at least three months before the expiration of the time of redemption on the sale mentioned in said notice, to wit, on the 4th day of March, A. D.

1879, and said land or lot was not taxed or specially assessed in the name of any person.

TAYLOR A. SNOW.

Sworn to, this 20th day of December, A. D. 1879, before me.
ZACH. HOFHEIMER, [SEAL.]
Notary Public.

STATE OF ILLINOIS, } ss:
County of Cook, }

Taylor A. Snow, of lawful age, being duly sworn, says that he resides in said county, and is the agent of Asahel Gage; that as such agent, deponent on the day hereinafter mentioned, being at least three months before the expiration of the time of redemption from the sale mentioned in the annexed notice, served a notice, of which the annexed notice is a true copy, on Mrs. Cecilia J. Armstrong, the wife of John M. Armstrong, personally, at Number 547 Michigan avenue, on the 28th day of April, A. D. 1879, at Chicago. This deponent was informed by the said Mrs. Cecilia J. Armstrong, on the date above written, that her name was formerly Cecilia J. Bracken, and who, this deponent is informed and verily believes, had then some interest, either as judgment creditor, mortgagee, or otherwise, in the land or lot described in the annexed notice, by handing the same to, and leaving the same with, the several persons as above stated in said county.

TAYLOR A. SNOW.

204 Sworn to, this 20th day of December, A. D. 1879, before me.
ZACH. HOFHEIMER, [SEAL.]
Notary Public.

STATE OF ILLINOIS, } ss:
County of Cook, }

U. George Taylor, of lawful age, being duly sworn, says that he resides in said county, and is the agent of Asahel Gage; that as such agent deponent, on the date mentioned in the foregoing affidavit, accompanied, was present with, and witnessed Taylor A. Snow, on the date and at the place mentioned in the foregoing affidavit, serve the notice above mentioned on the person mentioned in the above affidavit; and this deponent further says that a copy of the annexed notice served upon the said person at the time, place, and in the manner and form as stated above.

U. GEORGE TAYLOR.

Sworn to, this 20th day of December, A. D. 1879, before me.
ZACH. HOFHEIMER, [SEAL.]
Notary Public.

STATE OF ILLINOIS, } ss:
De Witt County, }

W. R. Morley, of lawful age, being duly sworn, says that he resides in said county, and is the agent of Asahel Gage; that as such agent deponent, on the day hereinafter mentioned, being at least

three months before the expiration of the time of redemption from the sale mentioned in the annexed notice, served a notice, of which the annexed notice is a true copy, on Mattocks and Mason by handing the same to and leaving the same with A. B. Mason per-
205 sonally, at the office of said Mattocks and Mason, in room 1, number 40, Dearborn street, Chicago, on the 14th day of March, A. D. 1879, who, this deponent is informed and verily believes, had then some interest, either as judgment creditor, mortgagee, or otherwise, in the land or lot described in the annexed notice, by handing the same to and leaving the same with the person as above stated in Cook county.

W. R. MORLEY.

Sworn to, this 12th day of December, A. D. 1879, before me.
Z. T. LILLARD, [SEAL.]
Notary Public.

STATE OF ILLINOIS, }
County of Cook, } ss:

Taylor A. Snow, of lawful age, being duly sworn, says that he resides in said county, and is the agent of Asahel Gage; that as such agent deponent, on the dates mentioned in the foregoing affidavit, accompanied, was present with, and witnessed W. R. Morley, on the date and at the place mentioned in the foregoing affidavit, serve the notice above mentioned on the person mentioned in the above affidavit; and this deponent further says that a copy of the annexed notice served upon the said persons at the time, place, and in the manner and form as stated above.

TAYLOR A. SNOW.

Sworn to, this 20th day of December, A. D. 1879, before me.
ZACH. HOFHEIMER, [SEAL.]
Notary Public.

Affidavit, Service, and Witness.

STATE OF ILLINOIS, }
County of Cook, } ss:

Taylor A. Snow, of lawful age, being duly sworn, says that
206 he resides in said county, and is the agent of Asahel Gage; that as such agent, deponent, on the respective days hereinafter mentioned, being at least three months before the expiration of the time of redemption from the sale mentioned in the annexed notice, served a notice, of which the annexed notice is a true copy, on John M. Armstrong personally, at room 10, number 84 La Salle street, on the 5th day of May, A. D. 1879; on J. B. Barnet personally, at room 52, number 162 Washington street, on the 24th day of April, A. D. 1879; and on Henry L. Barnet personally, at room 52, number 162 Washington street, on the 25th day of April, A. D. 1879; all at Chicago, and each of whom, this deponent is informed and verily believes, had then some interest, either as judgment creditors, mortgagees, or otherwise, in the land or lot described in

the annexed notice, by handing the same to and leaving the same with the several persons as above stated in said county.

TAYLOR A. SNOW.

Sworn to, this 20th day of December, A. D. 1879, before me.

ZACH. HOFHEIMER, [SEAL.]
Notary Public.

Affidavit, Owners or Parties Interested Served.

STATE OF ILLINOIS, } ss:
DeWitt County, }

W. R. Morley, of lawful age, being duly sworn, says that he resides in said county, and is the agent of Asahel Gage; that as such agent, deponent, on the twenty-fourth day of April, A. D. 1879, being at least three months before the expiration of the time of redemption on the sale mentioned in the annexed notice,
207 served a notice, of which the annexed notice is a true copy, on James Armstrong; and on the second day of May, A. D. 1879, this deponent served a copy of the same notice on A. D. Taylor, who, this deponent is informed and verily believes, had then some interest, either as judgment creditor, mortgagee, or otherwise, in the land or lot described in said notice, by handing the same to and leaving the same with James Armstrong personally, on a Larrabee street car, and on A. D. Taylor personally, at number 398 West Taylor street, at Chicago, in Cook county.

W. R. MORLEY.

Sworn to, this 12 day of December, A. D. 1879, before me.

Z. T. LILLARD, [SEAL.]
Notary Public.

Registered Letters.

STATE OF ILLINOIS, } ss:
County of Cook, }

Taylor A. Snow, of lawful age, being duly sworn, says that he resides in said county, and is the agent of Asahel Gage; that as such agent deponent, on the 10th day of April, A. D. 1879, being at least three months before the expiration of the time of redemption from the sale mentioned in the annexed notice, placed a notice, of which the annexed notice is a true copy, in an envelope, properly directed to "Harmon Pumpelly, New York State Nat. Bank, Albany, N. Y.," and deposited the same in the United States mail at Chicago, and received therefor the postmaster's receipt, dated the 10th day of April, A. D. 1879. And on the 17th day of April, A. D. 1879, this deponent received the return register letter receipt, signed by
208 "N. Y. S. B'k, E. Scott," which said receipt is in deponent's possession. Deponent is informed, and verily believes, that the said Harmon Pumpelly had then some interest, either as owner, agent, judgment creditor, mortgagee, or otherwise, in the land or lot described in said notice.

TAYLOR A. SNOW.

Sworn to, this 20th day of December, A. D. 1879.
ZACH. HOFHEIMER, [SEAL.]
Notary Public.

STATE OF ILLINOIS, } ss:
County of Cook, }

J. Porcius Gage, of lawful age, being duly sworn, says that he resides in said county, and is the agent of Asahel Gage; that as such agent deponent, on the 10th day of April, A. D. 1879, compared with Taylor A. Snow the notices mentioned above in his affidavit, and know that the annexed is a true copy of the notice mailed, as stated above. Affiant says that he examined the notice placed in the envelope by said Taylor A. Snow, and knows that the notice intended for Harmon Pumpelly was placed in the envelope, properly directed to him, as stated in the foregoing affidavit; and affiant further says that he accompanied the said Taylor A. Snow to the post-office in Chicago, in said county, and saw him deposit the said letter, as above described, in the United States mail, and received the post-master's receipt therefor, on the date and in the manner and form as above mentioned.

J. PORCIUS GAGE.

Sworn to, this 20th day of December, A. D. 1879.
ZACH. HOFHEIMER, [SEAL.]
Notary Public.

209 *Registered Letters.*

STATE OF ILLINOIS, } ss:
County of Cook, }

Taylor A. Snow, of lawful age, being duly sworn, says that he resides in said county, and is the agent of Asahel Gage; that as such agent, deponent, on the 25th day of April, A. D. 1879, being at least three months before the expiration of the time of redemption from the sale mentioned in the annexed notice, placed a notice, of which the annexed notice is a true copy, in an envelope, properly directed to Thomas Armstrong, Stark, Bradford Co., Florida, and deposited the same in the United States mail at Chicago, and received therefor the postmaster's receipt, dated the 25th day of April, 1879. And on the 23d day of May, 1879, this deponent received the return register letter receipt signed by "Thomas Armstrong," which said receipt is in deponent's possession. Deponent is informed and verily believes that the said Thomas Armstrong had then some interest, either as owner, agent, judgment creditor, mortgagee, or otherwise, in the land or lot described in said notice.

TAYLOR A. SNOW.

Sworn to, this 20th day of December, A. D. 1879.
ZACH HOFHEIMER, [SEAL.]
Notary Public.

STATE OF ILLINOIS, } ss:
County of Cook, }

U. George Taylor, of lawful age, being duly sworn, says that he resides in said county, and is the agent of Asahel Gage; that as such agent deponent, on the 25th day of April, A. D. 1879, com-
210 pared with Taylor A. Snow the notices mentioned above in his affidavit, and know that the annexed is a true copy of the notice mailed as stated above. Affiant says that he examined the notice placed in the envelope by said Taylor A. Snow, and knows that the notice intended for Thomas Armstrong was placed in the envelope, properly directed to him, as stated in the foregoing affidavit, and affiant further says that he accomprnied the said Taylor A. Snow to the post office in Chicago, in said county, and saw him deposit the said letter as above described in the United States mail and receive the postmaster's receipt therefor, on the date and in the manner and form as above mentioned.

U. GEORGE TAYLOR.

Sworn to this 20th day of December, A. D. 1879.
[SEAL.] ZACH. HOFHEIMER,
Notary Public.

STATE OF ILLINOIS, } ss:
County of Cook, }

Augustus N. Gage, of lawful age, being duly sworn, doth depose and say that he resides in the county of Cook aforesaid, and is the agent of Asahel Gage; that on or about the 3d day of April, A. D. 1879, one Harmon Pumpelly filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, on the chancery side thereof, a certain bill of complaint against said Asahel Gage *et al.*, in which said bill, among other things, it is alleged said Asahel Gage was the owner of and held the annexed tax certificate against the lands and lots therein mentioned; and that said Pumpelly was a non-resident, residing without the State of Illinois,
211 and that said Pumpelly was interested in the said lands and lots, and was about to become the owner thereof, and prayed to have said tax certificate removed as a cloud on his title, and afterwards, on or about the 14th day of August, A. D. 1879, an amended bill was filed in said cause, embracing substantially the same statements, and containing a prayer for a temporary injunction against the issuing of a tax deed upon the annexed certificate, which prayer was granted and the issuing of said tax deed was enjoined, and that afterwards, and on or about the 29th day of November, A. D. 1879, the said injunction was dissolved, and the order of said court dissolving said injunction is hereto annexed and made a part of this affidavit and marked "Ex. One—A. N. G.," and this affiant says, upon information and belief, that the said Pumpelly is not a resident of the State of Illinois, and that he is and has been since said 3d day of April, 1879, well aware of said sale, and received by reg-

istered letter a proper legal notice thereof. And further this deponent saith not.

AUGUSTUS N. GAGE.

Subscribed and sworn to, this 8th day of December, A. D. 1879, before me.

ZACH. HOFHEIMER, [SEAL.]
Notary Public.

(Ex. One.—A. N. G.)

United States Circuit Court, Northern District of Illinois.

SATURDAY, *November 29th, A. D.* 1879.

Present: Hon. Henry W. Blodgett, district judge.

212 HARMON PUMPELLY
vs.
ASAHEL GAGE AND ERNEST F. C. KLOKKE, as County Clerk of the County of Cook. } In Chancery.

Now come the parties, by their solicitors, and the court having considered and being now sufficiently advised upon the demurrer of the defendant to the amended bill herein, sustains said demurrer, and orders that this cause be dismissed at the cost of the complainant, without prejudice to the right of the complainant to bring an action at law or in equity, if he should hereafter become possessed of a title to the premises mentioned in the bill herein. And it thereupon is ordered by the court that the defendants do have and recover of and from the complainant herein their costs and charges about their defense in this behalf expended, amounting to the sum of —— dollars and —— cents, and that execution issue therefor.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct copy of the order entered of record in said court, on the 29th day of November, A. D 1879, in the cause wherein Harmon Pumpelly is the complainant and Asahel Gage *et al.* are the defendants, as the same appears from the original records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, this 5th day of December, A. D. 1879.

[SEAL.] WM. H. BRADLEY, *Clerk.*

213 *Notice of Sale for Tax.*

To —— whom it may concern:

This is to notify you that on the 3d day of October, 1877, I purchased the following described real estate, situate in the county of Cook, and State of Illinois, at a sale of lots and lands for taxes and special assessments, authorized by the laws of the State of Illinois,

taxed in no name, to wit, lot 6, in re-subdivision of block 50, in Elston's Addition to Chicago, taxed or specially assessed for the years 1874, 1875, and 1876 for taxes as extended on the general tax warrant of 1876, and that the time of redemption thereof from said sale will expire on the 3d day of October, 1879.

ASAHEL GAGE.

Redemption may be made at the office of the county clerk.

State, county, and city certificate of sale for taxes of A. D. 1876, etc.

No. 9710, volume 23, page 258.

STATE OF ILLINOIS, } ss:
Cook County, }

This is to certify, that at the June term, A. D. 1877, of the county court of said Cook county, on the application of Louis C. Huck, county treasurer and *ex-officio* collector of the revenue of Cook county, for judgment for the delinquent State, county, city, town, park, boulevard, and park taxes, and special assessments levied and assessed upon the lands and lots in the county of Cook, and State of Illinois, for the year 1876, and for judgment for the amount for which said lands and lots were forfeited to the State of Illi-
214 nois, at the annual tax sale for State and county taxes for the years 1875, together with printer's fees, interest at ten per cent. and back taxes, and costs remaining due and unpaid thereon, and returned delinquent and unpaid by the town collectors of State and county taxes for said several years, pursuant to law, a judgment was entered against the following-described lands or lots for so much of the said taxes and special assessments, and the amount for which the same were forfeited to the State as aforesaid, as were found to be due thereon, and costs, being for the sum of two hundred and twenty-four dollars and 89 cents, as follows, to wit:

Taxes, etc., A. D. 1876	$90 67
Aggregate amount due on forfeiture at tax sale for taxes of A. D. 1875	133 69
Back taxes, 1875	
Costs	53
Total	$224 89

And in and by said judgment it was ordered by said court that said lands or lots, or so much thereof as should be sufficient to satisfy the amount of said judgment, be sold as the law directs, to wit:

Lot 6, re-subd'n of block 50, in Elston's Add'n to Chicago, section —, town —, N. range — east, of the third principal meridian, situated in said Cook county. And that in pursuance of the statute in such case made and provided process was issued to said treasurer and *ex-officio* collector of said county to sell said lands or lots, or so much thereof as should be necessary to satisfy the said judgment. That by virtue of said process said collector did, on

the 23d day of July, A. D. 1877, open the sale upon said process, and said sale being duly continued from day to day by adjournments duly announced, and the same being reached
215 in its order, said collector did this day offer for sale, and did sell, so much of said lands or lots as would pay the sum aforesaid, and that A. Gage became the purchaser of the whole of said lands or lots, and paid thereon the sum aforesaid, that being the least quantity of said lands or lots for which any person would pay the said amount due thereon. Now, therefore, in case the said lands or lots sold are not redeemed, in manner and form as the law directs, within two years from the date hereof, the said purchaser, his heirs or assigns, will be entitled to receive a deed of the lands or lots above sold, as by law directed. Unless the holder of this certificate takes out the deed as entitled by law, and files the same for record within one year from and after the time for redemption expires, then this certificate shall, from and after the expiration of such one year, be absolutely null. If the holder of this certificate shall be prevented from obtaining a deed by injunction or order of any court, or by refusal of the clerk to execute the same, the time he is so prevented shall be excluded from the computation of such time. In witness whereof, I have hereunto subscribed my name and affixed the seal of said county court, at Chicago, in said county, this 3d day of October, A. D. 1877.

HERMANN LIEB, [SEAL.]
Clerk of the County Court.

Countersigned:
L. C. HUCK,
Treasurer and Ex-Officio Collector of Cook County.

(Endorsed:) No. K, 1027. Filed and deed issued to Asahel Gage, February 4th, A. D. 1880. E. F. C. Klokke, county clerk.

Without recourse.

ASAHEL GAGE.

216 STATE OF ILLINOIS, } ss.:
County of Cook, }

I, E. F. C. Klokke, clerk of the county court of Cook county, in the State aforesaid, do hereby certify that the foregoing is a true and correct copy of the Cook county delinquent tax list, as advertised in "The Inter-Ocean," on the 18th day of May, A. D. 1877, by the county treasurer and *ex-officio* collector of the revenue of Cook county, Illinois, and of the certificate of the publisher of said "Inter-Ocean" thereto attached. Also of the county collector's delinquent lists, the orders, and the judgment of the county court of Cook county, Illinois; the judgment record, the precept, and record of sale for the State, county, and other taxes for the year 1876 and prior years, and the certificate of sale and notices and affidavits upon which deed was issued, so far as the same relates to the property described in the foregoing copy; all of which appears from the records and files of my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said county court, at my office, in the city of Chicago, in said county, this 23d day of July, A. D. 1880.

E. F. C. KLOKKE, [SEAL.]
Clerk of the County Court.

217 EXHIBIT "4."—GAGE.

This is to certify that the annexed notice of sale for tax was published in the Chicago Daily Evening Journal, a newspaper of general circulation, printed and published in the city of Chicago, county of Cook, and State of Illinois, three (3) times, being one time a day for three (3) successive days, the date of the first paper containing the same being the 2nd day of June, 1879, having been published and issued on that day, and the date of the last paper containing the same being the 4th day of June, 1879, being published and issued on that day, and that I have received $17.16 *dollars* for publishing the same. Dated Chicago, June 11th, 1879.

HENRY W. FARRAR, *Publisher.*

To the owners or parties interested in the following-described lands and lots, and to the persons in whose names the same were taxed or specially assessed, and to whom it may concern:

This is to notify you that at a sale of lands and lots held in the city of Chicago, county of Cook, and State of Illinois, which said sale was commenced on the 23d day of July, A. D. 1877, and
218 was continued from day to day by adjournments duly announced as provided by law until the dates of the respective sales hereinafter mentioned, the same being reached in their regular order, the undersigned (Asahel Gage) purchased for taxes and special assessments authorized by and levied or assessed in compliance with the laws of the State of Illinois, and taxed or specially assessed for the years hereinafter stated, the following-described lands and lots situated in the county of Cook, and State of Illinois, on the days hereinafter particularly stated, and said lands and lots were taxed in the names hereinafter set forth, and the time of redemption of each of said lands and lots from the sale thereof will expire in two years from the date of each respective sale, as stated below, to wit, on the 3d day of October, A. D. 1877. I purchased lot 6 in resubdivision of block 50 in Elston's Addition to Chicago, taxed in no name, taxed or specially assessed for the years 1874, 1875, and 1876, and the time of redemption of said lot from said sale will expire on the 3d day of October, 1879.

ASAHEL GAGE.

219 STATE OF ILLINOIS, } *ss:*
County of Cook, }

I, E. F. C. Klokke, clerk of the county court of Cook county, in the State aforesaid, do hereby certify that the above and foregoing is a true and complete copy of a certain notice of sale for taxes, as published in the Chicago Daily Evening Journal, together with the publisher's certificate of publication thereto attached, so far as the same

relates to the land and premises therein mentioned and described, and that said notice was filed in my office by Asahel Gage, on the 3rd day of February, 1880, and is in my office duly recorded, as required by law; all of which appears from the records and files of my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said county court, at my office, in the city of Chicago, in said county, this eleventh (11th) day of November, A. D. 1880.

[SEAL.] E. F. C. KLOKKE,
Clerk of the County Court.

220 EXHIBIT "5"—GAGE.

STATE OF ILLINOIS, } ss:
Cook County, }

Whereas at a public sale of real estate for the non-payment of taxes, made in the county aforesaid, on the third (3d) day of October, A. D. 1877, the following described real estate was sold, to wit: Lot six (6), in the re-subdivision of block fifty (50), in Elston's Addition to Chicago, situated in said Cook county and State of Illinois.

And whereas the same not having been redeemed from said sale, and it appearing that the holder of the certificate of purchase of said real estate has complied with the laws of the State of Illinois necessary to entitle him to a deed of said real estate:

Now, therefore, know ye, that I, E. F. C. Klokke, county clerk of said county of Cook, in consideration of the premises, and by
221 virtue of the statutes of the State of Illinois in such cases provided, and do hereby grant and convey unto Asahel Gage, his heirs and assigns forever, the said real estate hereinbefore described, subject, however, to any redemption provided by law.

The following provision of the Revised Statutes of said State of Illinois, being section 225 of chapter 120, is recited, pursuant to law:

"Unless the holder of the certificate for real estate purchased at any tax sale under this act takes out the deed as entitled by law, and files the same for record within one year from and after the time for redemption expires, the said certificate or deed and the sale on which it is based shall, from and afer the expiration of such one year, be absolutely null. If the holder of such certificate shall be prevented from obtaining such deed by injunction or order of any court, or by the refusal of the clerk to execute the same, the time he is so prevented shall be excluded from the computation of such time.

Given under my hand and the seal of our court, this fourth (4th) day of February, A. D. 1880.

[SEAL.] E. F. C. KLOKKE, *County Clerk.*

222 STATE OF ILLINOIS, } ss:
County of Cook, City of Chicago, }

On this fourth (4th) day of February, A. D. 1880, before me, J. P. Vaswinkle, a notary public in and for said county, personally appeared E. F. C. Klokke, county clerk of said county of Cook, personally known to me to be the real person whose name is subscribed to the

within deed as having executed the same, and acknowledged that he executed the same, as such county clerk, voluntarily and freely, for the uses and purposes therein set forth.

Given under my hand and notarial seal, the day and year aforesaid.

[SEAL.] J. P. VANWINKLE,
Notary Public.

Endorsed: 470. No. K 1027. Tax deed. E. F. C. Klokke, county clerk of Cook county, Illinois, to Asahel Gage. State
223 of Illinois, Cook county. No. 256,278. This instrument was filed for record on the seventh day of February, A. D. 1880, at the hour of 3 o'clock p. m., and duly recorded in Book 975 of Records, at page 198. Jas. W. Brockway, recorder of deeds. Exhibit "5"—Gage.

224 And the complainant, to further maintain the issues upon his part, introduced in evidence a stipulation of counsel entered into before the master in relation to the title of the complainant, which stipulation is in words and figures as follows, to wit:

Stipulation.

UNITED STATES OF AMERICA, }
Northern District of Illinois, } *ss:*

In the Circuit Court of the United States for the Northern District of Illinois.

HARMON PUMPELLY }
vs. } In Chancery.
ASAHEL GAGE. }

Upon reference to master it is hereby stipulated and agreed by and between counsel for the respective parties herein that the abstracts of title and other evidences of title to the property herein involved shall not be introduced in evidence herein, and in
225 order to save the expense thereof, and the encumbering of this record by the production of said abstracts of title and other documentary evidence of complainant, it is stipulated and agreed that they show title to the property here in question from the Government of the United States into one Thomas Armstrong. And it is for the same reason stipulated and agreed by the respective parties hereto that foreclosure proceedings in this court were instituted by this complainant against said Thomas Armstrong, and the title of said Armstrong was foreclosed by decree of this court in said cause, and a master's deed based upon a sale under said decree was executed to the said Harmon Pumpelly, the said complainant.

MATTOCKS & MASON,
Solicitor of Harmon Pumpelly, the said Complainant.
AUGUSTUS N. GAGE,
Solicitor of Asahel Gage, the said Defendant.

And further to maintain the issues upon his part, the
226 complainant introduced in evidence a stipulation entered into by the respective parties in relation to the amount of

money paid by the defendant at the tax sales, and for other taxes; which said stipulation is in words and figures as follows, to wit:

Stipulation.

In the Circuit Court of the United States, Northern District of Illinois.

HARMON PUMPELLY, *vs* ASAHEL GAGE. } In Chancery.

It is hereby stipulated and agreed by the respective parties hereto, in order to save the delay and expense consequent upon a reference to a master in chancery, to strike an account, that the following schedule represents the amount of money the defendant, Asahel Gage, has paid out at the various tax sales for the purchase of the property mentioned in the bill, as well as taxes which he has paid thereon, together with double the amount of the sales, and with interest thereon at six per centum from a date of two years from the
227 date of sale, and also interest at six per centum upon all taxes paid by said defendant from the date of payment.

228 SCHEDULE.

For what tax sold or paid.	When sold or paid.	Am't of payment.	Double the amount sale.	Interest.
General taxes of 1865	Bought Aug. 27, 1866	$7 87		$7 36
" " " 1873	" Oct. 27, 1874		$53 66	17 73
" " " 1876 and prior years.	" " 3, 1877		449 78	69 61
3d installment of Lincoln Park ass't.	Paid Sept. 6, 1878	14 45		3 16
General tax of 1877	" " 25, "	102 35		45 43
City taxes of 1873 and 1874	" " " "	104 22		
General tax of 1878	" April 3, 1879	53 13		12 32
4th installment Lincoln Park assessment.	" " " "	13 69		
General tax of 1879	" May 1, 1880	59 24		8 68
5th installment Lincoln Park assessment.	" " " "	13 19		
General tax of 1881	" Jan'y 10, 1882	68 48		1 46
7th installment Lincoln Park assessment.	" " " "	12 19		
	Totals	$448 81	$503 44	$165 75
				503 44
				448 81
	Grand total			$1,118 00

MASON BROTHERS,
Solicitors for Complainant.
AUGUSTUS N. GAGE,
Solicitor for Defendant.

Endorsed: Filed May 9, 1882. W. H. Bradley, clerk.

229 And the said defendant to further maintain the issues upon his part, under his amended answer, filed June 15, 1881, offered in evidence a certain amended bill of complaint, filed August 14, 1879, in the case of Harmon Pumpelly *vs.* Asahel Gage, in the circuit court of the United States for the northern district of Illinois, and numbered 16306; which said amended bill is in words and figures following, to wit:

Amended Bill.

In the Circuit Court of the United States for the Northern District of Illinois.

HARMON PUMPELLY *vs.* ASAHEL GAGE and ERNEST F. C. KLOKKE, as county clerk of the county of Cook.	In Chancery. Amended Bill.

To the judges of said court in chancery sitting:

Your orator, Harmon Pumpelly, by leave of court first had, files this his amended bill herein, and respectfully shows unto
230 your honors, that on or about the fourth day of August, A. D. 1871, he became and was the equitable mortgagee of the premises situated in the county of Cook, and State of Illinois, to wit, in the district aforesaid, known and described as lot six (6), in block fifty (50), in Elston Addition to Chicago, the same being then conveyed to one Ira Scott, as trustee, to secure the payment of a note payable to your orator.

That thereafter, to wit, on or about the twenty-seventh day of August, A. D. 1878, your orator filed his certain bill in this court on the chancery side thereof, in the cause entitled Harmon Pumpelly *vs.* Thomas Armstrong *et al.*, general number ——, to foreclose the said trust deed.

That thereupon such proceedings were had your orator, craving leave to refer to the files and record of said cause, that upon the twenty-second day of January, A. D. 1879, the said premises were sold by decree of this court at a master's sale, to satisfy the debt so due your orator.

That at such sale your orator became the purchaser of said premises; that the master of this court issued a certificate of
231 purchase of said premises to your orator; that he now holds said certificate, and that he will be entitled to a deed thereunder on the twenty-third day of April, A. D. 1880, unless redemption is made from such sale, and that your orator is informed and believes that there is no chance of said redemption.

That on or about the second day of September, A. D. 1878, one Walter Mattocks was appointed receiver of said premises by an order of this honorable court, entered in the said cause of Pumpelly *vs.* Armstrong, and that the said Walter Mattocks hath since been, and is now, in possession of the said premises.

That on or about October third, A. D. 1877, a certificate of sale for certain taxes on lot six (6), in block fifty (50), in Elston's Ad-

dition, was issued to one Asahel Gage; that among the taxes alleged to be sold then and to him were the taxes of the city of Chicago, and of the north town of Chicago, for the year 1875; that the former have been declared illegal and void by the court
232 of last resort; that a portion of the latter, to wit, twenty-three per cent. thereof, was also illegal and void, as having been appropriated, levied, collected, and used to pay illegal salaries; that said sale and certificate are null and void, but that nevertheless the said Asahel Gage and Ernest F. C. Klakke, as county clerk of the county of Cook aforesaid, both of whom are residents of the district aforesaid, and citizens of the State of Illinois, are conspiring and confederating together to issue a tax deed to said premises on said certificate, shortly after the third day of October, A. D. 1879, and so vex, harass, and oppress your orator.

That said certificate is a cloud on your orator's estate in said property, and his enjoyment, use, and disposal of the same.

That your orator is ready and willing to pay all the disbursements of said Gage for taxes on said property, with interest at six per cent. per annum upon said disbursements, and your orator hereby offers to do so upon the surrender of said certificate and a re-
233 lease of the pretended tax claims of said Gage; but your orator avers and insists that if he is obliged to maintain his right to said relief by litigation, then no such conditions of payment should be required of him as a condition of such relief.

Answer under oath is waived; wherefore he prays for summons against Asahel Gage and Ernest F. C. Klokke, as county clerk of the county of Cook, and for relief by a temporary injunction against the transfer of said certificate, and the application for an issuance of a tax deed upon such certificate; and further, for a perpetual injunction against such a deed, and for a decree cancelling and holding for naught and void said certificate, and directing the surrender thereof, and for such other and further and better relief as to your honors may seem meet, etc.

And your orator will ever pray, etc.

HARMON PUMPELLY,
By MATTOCKS AND MASON,
His Attorneys-in-Fact.
MATTOCKS & MASON,
Complainant's Sol'rs.
ALFRED B. MASON,
Of Counsel.

Endorsed: Filed Aug. 14th, 1879. W. H. Bradley, cl'k.

234 And to further maintain the issues on his part, the said defendant offered in evidence an order of said court in said cause last aforesaid, entered on the 10th day of October, 1879, in chancery, record 22, page 386, granting a temporary injunction against this defendant, and also an injunction bond in said cause last aforesaid, filed on the 10th day of October, 1879, which said order and bond are in words and figures following, to wit:

Entry.

FRIDAY, *October* 10*th*, *A. D.* 1879.

Present: Hon. Henry W. Blodgett, district judge.

HARMON PUMPELLY
vs.
ASAHEL GAGE and ERNEST F. C. KLOKKE, as County Clerk, &c. } 16306. In Chancery.

This day, this cause coming on for hearing, on the motion of Mattocks & Mason, complainant's solicitors, for the issuance of a temporary injunction, and the parties hereto consenting to said
235 injunction, it is ordered that a writ issue in accordance with the prayer of the bill upon filing herein a bond in the penal sum of one thousand dollars, with Alfred B. Mason as surety, conditioned in the usual form of such bonds.

Injunction Bond.

Know all men by these presents, that we, Harmon Pumpelly, of the State of New York, and Alfred R. Mason, of the county of Cook, and State of Illinois, are held and firmly bound unto Asahel Gage and Ernest F. C. Klokke, of the city of Chicago, of county Cook, and State of Illinois, in the sum of one thousand dollars, to be paid to the said Asahel Gage and Ern-st F. C. Klokke, their executors, administrators, or assigns, for which payment well and truly to be made we bind ourselves, jointly and severally, and our respective heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated this 15th day of October, A. D. 1879.

236 Whereas the above-bounden Harmon Pumpelly has filed his bill of complaint in the circuit court of the U. S. for the northern district of Illinois against the above-named Asahel Gage and Ernest F. C. Klokke, praying among other things for an injunction to restrain the said Asahel Gage and Ernest F. C. Klokke, and each of them, from applying for a tax deed or issuing a tax deed on a certain tax certificate therein set forth.

And whereas the Honorable Henry W. Blodgett, the judge of said court, has allowed an injunction for that purpose, according to the prayer of said bill, upon the said Harmon Pumpelly, giving bond and security as provided by law and as required by the order of said court granting said injunction:

Now, therefore, the condition of the above obligation is such that if the above bounden Harmon Pumpelly and Alfred B. Mason, their executors or administrators, or any of them, shall and do well and truly pay, or cause to be paid, to the said Asahel Gage and Ernest F. C. Klokke, their executors, administrators, or assigns, all
237 such costs and damages as shall be awarded against the said complainant in case the said injunction shall be dissolved,

then the above obligation to be void; otherwise to be and remain in full force and virtue.

HARMON PUMPELLY, [SEAL.]
By MATTOCKS & MASON,
His Att'ys in Fact.

Sealed and delivered in presence of—
ALFRED B. MASON.

Endorsed: Filed in the circuit court, this 10th day of October, A. D. 1879. Wm. H. Bradley, clerk.

238 And to further maintain the issues upon his part, the said defendant introduced in evidence a certain demurrer, filed in said cause last aforesaid, on the 18th day of October, 1879, which is in words and figures as follows, to wit:

Demurrer.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court for the Northern District of Illinois.

HARMON PUMPELLY
vs.
ASAHEL GAGE AND ERNEST F. C. KLOKKE, Co. Clerk. } In Chancery.

The demurrer of Asahel Gage, one of the defendants, to the amended bill of complaint of Harmon Pumpelly, the above-named complainant:

This defendant, by protestation, not confessing all or any of the matters and things in the complainant's bill of complaint contained to be true, in such manner and form as the same are therein and thereby set forth and alleged, doth demur to the said bill, and
239 for cause of demur showeth that the said complainant hath not in and by his said bill made or stated such a case as entitles him in a court of equity to any discovery from this defendant, or to any relief against him, as to the matters stated in said bill, or any such matters.

Wherefore, and for divers other good cause- of demurrer appearing in said bill, this defendant doth demur thereto, and humbly demands the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

ASAHEL GAGE.
ASAHEL GAGE,
By A. N. GAGE AND
M. R. M. WALLACE,
His Solicitors.

AUGUSTUS N. GAGE AND
MARTIN R. M. WALLACE,
Of Counsel for Defendant, Asahel Gage.

UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

240 In the Circuit Court of the United States, Northern Disirict of Illinois.

HARMON PUMPELLY *vs.* ASAHEL GAGE *et al.* } In Chancery.

Asahel Gage, being duly sworn, doth depose and say he is one of the defendants to the above-entitled cause, and has signed the demurrer hereto attached; that he is advised by counsel that the demurrer hereto is the proper defence for him to interpose to said cause, and he interposed the same upon such advice, and the same is not filed for the purpose of delay.

ASAHEL GAGE.

Subscribed and sworn to before me, this —— day of October, A. D. 1879.

[SEAL.] TAYLOR A. SNOW, *Notary Public.*

This is to certify that in our opinion the demurrer of Asahel Gage, hereto attached, is the proper defence for the said Gage; that the same is well taken, and not interposed for the purpose of delay.

AUGUSTUS N. GAGE AND MARTIN R. M. WALLACE,

241 *Solicitors and of Counsel for the Defendant, Asahel Gage.*

(Endorsed:) Filed Oct. 18, 1879. W. H. Bradley, c'lk.

And the defendant, to further maintain the issues upon his part, introduced in evidence a final order of the court in said cause last aforesaid, which said order was entered on the 29th day of November, 1879, in chancery record 23, page 53, and is in words and figures as follows, to wit:

Final Entry.

SATURDAY, *November 29th, A. D.* 1879.

Present: Hon. Henry W. Blodgett, district judge.

HARMON PUMPELLY *vs.* ASAHEL GAGE and ERNEST F. C. KLOKKE, as County Clerk of the County of Cook. } No. 16306. In Chancery.

Now come the parties, by their solicitors, and the court
242 having considered and being now sufficiently advised upon the demurrer of the defendant to the amended bill herein, sustains said demurrer, and orders that this cause be dismissed at the costs of the complainant without prejudice to the right of the complainant to bring an action at law or in equity, if he should hereafter become possessed of a title to the premises mentioned in

said bill, and it is thereupon ordered by the court that the defendants do have and recover of and from the complainant their costs and charges about their defense in this behalf expended, amounting to the sum of thirteen dollars and ninety cents, and that execution issue therefor.

Which was all the evidence adduced or offered by either party upon the trial of said cause.

And upon the rendition of the decree herein, the defendant introduced in evidence, in support of his prayer for an appeal to the Supreme Court of the United States in order to show the amount in controversy, the affidavits of Eugene H. Fishburn, Samuel
243 H. Kerfoot, Eli H. Carfield, Hermann Benze, Henry H. Gage, and Baird E. Baird.

Affidavit of Fishburn.

In the Circuit Court of the United States for the Northern District of Illinois.

HARMON PUMPELLY
vs.
ASAHEL GAGE. } In Chancery.

UNITED STATES OF AMERICA,
State and Northern District of Illinois, } *ss:*

Eugene H. Fishburn, being first duly sworn, doth depose and say he is engaged in business in Chicago, in the State aforesaid; that he is acquainted with the value of lot six, in block fifty, in Elston's Addition to Chicago, and that the same is worth the sum of six thousand six hundred dollars ($6,600).

And further this deponent sayeth not.

EUGENE H. FISHBURN.

Subscribed and sworn to before me, this 17th day of May, A. D. 1882.

[SEAL.] JOHN W. MACGEAH,
Notary Public.

244 *Affidavit of Samuel H. Kerfoot.*

In the Circuit Court of the United States for the Northern District of Illinois.

HARMON PUMPELLY
vs.
ASAHEL GAGE. } In Chancery.

UNITED STATES OF AMERICA,
State and Northern District of Illinois, } *ss:*

Samuel H. Kerfoot, being first duly sworn, doth depose and say he is engaged in business in Chicago, in the State aforesaid; that he is acquainted with values of real estate in said city, in said State aforesaid; that he is acquainted with the value of lot six, in block

50, in Elston's Addition to Chicago, and that the same is worth the sum of not less than sixty-six hundred dollars ($6,600).

And further this deponent sayeth not.

SAM'L H. KERFOOT,

Subscribed and sworn to before me, this seventeenth (17th) day of May, A. D. 1882.

[SEAL.] S. D. C. HAYS,
Notary Public.

245 *Affidavit of Eli L. Canfield.*

In the Circuit Court of the United States for the Northern District of Illinois.

HARMON PUMPELLY
vs.
ASAHEL GAGE. } In Chancery.

UNITED STATES OF AMERICA,
State and Northern District of Illinois, } ss:

Eli L. Canfield, being first duly sworn, doth depose and say he is engaged in business in Chicago, in the State aforesaid; that he is acquainted with values of real estate in said city, in said State aforesaid; that he is acquainted with the value of lot six, in block 50, in Elston's Addition to Chicago, and that the same is worth the sum of not less than eighty dollars per foot front, or fifty-two hundred and eighty (5,280) dollars for the said lot; and further this deponent saith not.

ELI L. CANFIELD.

Subscribed and sworn to before me, this seventeenth day of May, A. D. 1882.

[SEAL.] THOS. L. FORREST,
Notary Public.

246 *Affidavit of Herman Benze.*

In the Circuit Court of the United States for the Northern District of Illinois.

HARMON PUMPELLY
vs.
ASAHEL GAGE. } In Chancery.

UNITED STATES OF AMERICA,
State of Illinois, County of Cook, } ss:

Herman Benze, being first duly sworn, doth depose and say he is engaged in the real estate business in Chicago, Cook county aforesaid; that he is acquainted with values of real estate in said city and county; that he is acquainted with the value of the property involved in the above-entitled suit, being the lands and lots known as lot six (6), in block fifty (50), in Elston's Addition to Chicago, and

that said land and lot is worth the sum of eight thousand two hundred and fifty dollars; and further this deponent saith not.

HERMAN BENZE.

247 Subscribed and sworn to before me, this eighteenth day of May, A. D. 1882.

[SEAL.] JAS. T. HAYNE,
Notary Public.

Affidavit of Henry H. Gage.

In the Circuit Court of the United States for the Northern District of Illinois.

HARMON PUMPELLY
vs.
ASAHEL GAGE. } In Chancery.

UNITED STATES OF AMERICA,
State of Illinois, County of Cook, } *ss:*

Henry H. Gage, being duly sworn, doth depose and say he is engaged in the real estate business in the city of Chicago, in said county of Cook aforesaid; that he is acquainted with the value of real estate therein; that he is acquainted with the value of the real estate involved in the above-entitled cause, being the lands and premises known and described as lot six (6), in block fifty (50), in El-
248 ston's Addition to Chicago, and that said land and lot is worth the sum of eight thousand two hundred fifty ($8,250) dollars; and further this deponent saith not.

HENRY H. GAGE.

Subscribed and sworn to before me, this 8th day of May, A. D. 1882.

[SEAL.] AUGUSTUS N. GAGE,
Notary Public.

Affidavit of Parker E. Baird.

In the Circuit Court of the United States for the Northern District of Illinois.

HARMON PUMPELLY
vs.
ASAHEL GAGE. } In Chancery.

UNITED STATES OF AMERICA,
State and Northern District of Illinois, } *ss:*

Parker E. Baird, being first duly sworn, doth depose and say he resides in Chicago, in said State aforesaid, and is engaged in the real estate business therein; that he has examined the records in
249 the recorder's office of Cook county, in said State aforesaid, for the purpose of ascertaining what conveyances of real estate have recently been made in the neighborhood of the property known as lot six (6) of block fifty (50), in Elston's Addition to Chi-

cago, and to learn the consideration in such transfers, and that the said records show a number of sales of property in said block fifty (50) aforesaid, of which the following is an abstract:

1. Bryan Lathrop to Marcellus B. Hagans. Trustee's deed, dated September 9, 1881. Recorded book 1107, page 563. Consideration, $6,000.00. North 50 ft., lot 3, block 50, Elston's Addition.

2. Azel F. Hatch and wife to Lidie B. Wellen. Special warranty deed, dated February 6, 1882. Recorded book 1193, page 156. Consideration, $10,000. North 60 feet of the south 150 feet of lot 3, in block 50, Elston's Addition to Chicago.

250 3. Azel F. Hatch and wife to Guy R. C. Allen. Special warranty deed, dated February 6, 1882. Recorded, book 1193, page 155. Consideration, $10,000. North 58 feet of the south 90 feet of lot 3, block 50, Elston's Addition.

4. Azel F. Hatch and wife to Delia A. Evans. Special warranty deed, dated February 6, 1882. Recorded, book 1193, page 157. Consideration, $10,000. South 32 feet of lot 3, and north 23.25 feet of lot 4, in block 50, in Elston's Addition.

5. Azel F Hatch and wife to Mary M. Wagner. Special warranty deed, dated February 6, 1882. Recorded, book 1193, page 158. Consideration, $10,000. South 55.25 feet lot 4, block 50, in Elston's Addition to Chicago.

And this deponent says that attached hereto is a plat of said block 50, in said Elston's Addition, and marked thereon in red ink to show the locality and size thereof, is a plat of the pieces of real estate

251 mentioned in the above conveyances, and that the numbers marked in red ink on said plat are placed thereon to identify them with the numbers in the abstract in this affidavit respectively; and further this deponent sayeth not.

PARKER E. BAIRD.

Subscribed and sworn to before me, this eighteenth day of May, A. D. 1882.

[SEAL.] C. A. SAWYER,
Notary Public.

[Here follows diagram, marked page 252.]

253 And the complainant, at said time, for the same purpose, introduced in evidence the affidavits of M. D. Kerfoot, Walter Mattocks, R. B. Mason, and James B. Gallaway.

Affidavit of W. D. Kerfoot.

UNITED STATES OF AMERICA, }
Northern District of Illinois, } *ss:*

Circuit Court of the United States for the Northern District of Illinois.

HARMON PUMPELLY }
vs. } Chancery.
ASAHEL GAGE. }

William D. Kerfoot, being duly sworn, states that he has been

engaged in the real estate business in the city of Chicago, county of Cook, and State of Illinois, for the period of 20 years, and is now engaged in said business; that he is acquainted with real estate values in said city, and knows the value of lot six (6), in block fifty (50), Elston Addition to Chicago; that the fair market value
254 of said lot is not to exceed four thousand ($4,000) dollars.

WILLIAM D. KERFOOT.

Subscribed and sworn to before me, this 18th day of May, A. D. 1882.

[SEAL.] HENRY B. MASON,
Notary Public.

Affidavit of Walter Mattocks.

UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

Circuit Court of the United States for the Northern District of Illinois.

HARMON PUMPELLY *vs.* ASAHEL GAGE. } Chancery.

Walter Mattocks, being duly sworn, states that he is the agent for said Harmon Pumpelly in and about the care and management of said Pumpelly's real estate in the city of Chicago, county of Cook, and State of Illinois, and that he is well acquainted with the value of lot six (6), in block fifty (50), Elston Addition to Chicago; that the adjoining lot five (5), in said block, of about the same value,
255 was in good faith, and prior to the decision of this cause, sold by deed made September 23, 1881, for the sum of $3,750.00, or about $62.50 per front foot, which is the fair market value of the same; that the aforesaid lot six (6) is worth not to exceed the sum of $3,750.00, and was in good faith contracted to be sold for that amount, if cloud were removed fromtitle, and deed of said lot six (6), bearing date April 14th, 1882, was made and is ready for delivery, the said Pumpelly to receive net said sum of $3,750.00, less the amount required to redeem said land from taxes, and less commissions and all other charges and expenses of every kind relating to said lot.

WALTER MATTOCKS.

Subscribed and sworn to before me, this 13th day of May, A. D. 1882.

[SEAL.] DAVID CAMPBELL,
Notary Public.

Affidavit of R. B. Mason.

UNITED STATES OF AMERICA, *Northern District of Illinois:*

Circuit Court of the United States for the Northern District of Illinois.

256 HARMON PUMPELLY *vs.* ASAHEL GAGE.

Roswell B. Mason, being duly sworn, states on oath that he is

president of the Chicago South Branch Dock Company, and has had large experience during the twenty years last past in and about the improvement, renting, and sale of dock property in the city of Chicago; that, in his best judgment, it would require a very large expenditure for docking, dredging, and filling to put lot six (6), block fifty (50), Elston Addition to Chicago, in suitable condition for advantageous use, and that, according to affiant's best judgment, the fair market value of said lot in its present condition does not exceed $3,620.

ROSWELL B. MASON.

Subscribed and sworn to before me, this 19th day of May, A. D. 1882.

[SEAL.] HENRY B. MASON,
Notary Public.

257 *Affidavit of James B. Gallaway.*

UNITED STATES OF AMERICA, *Northern District of Illinois:*

Circuit Court of the United States for the Northern District of Illinois.

HARMON PUMPELLY *vs.* ASAHEL GAGE.

James B. Gallaway, being duly sworn, states or oath that he has for many years had charge of property in Elston Addition to Chicago, and is a part owner of the same; that within the last two years he purchased at private sale a ten-thirty-fifths' interest in the property directly across the river from lot 6, block 50, said Elston Addition, his purchase being a ten-thirty-fifths' interest in a tract 100 feet front by 240 to 300 feet deep, with improvements thereon, which improvements consist of the Garden City Glass Works, costing about $20,000.00, and that the price paid for land and improvements was at the rate of $35.00 per front foot.

258 Affiant is well acquainted with the premises known as lot 6, block 50, Elston Addition to Chicago, and knows the value thereof.

The said premises are situated in the northwest part of Goose Island; they front upon the north branch of the Chicago river, and back upon Cherry street; the land lies very low; there is only surface drainage, and very insufficient; the dock is many years old and rotting to pieces; several sections of it have fallen into the water; Cherry street, upon which the land is situated, is no thoroughfare, as the bridge to the north across the river is only a railroad bridge, and not for passenger travel; the street is neither paved, graded, nor sewered; it consists of a single railroad track, with one side switch; there is no roadway at all for horses; there are no sidewalks nor gas; there are no improvements of any value.

The property upon Goose Island in the vacinity of Division street and south of Division street is of a very much better character. There

259 are raised and graded thoroughfares, with substantial sidewalks; there the river has been dredged, the lots filled in, and a large amount of new and superior docking made.

Goose Island is by nature low and marshy. Real estate values have been created upon some portions of the island by a lavish expenditure in improvements. The upper part of the island, however, including lot six (6) aforesaid, still remains without material improvement.

The fair market value of said lot six (6) is not to exceed $65.00 per front foot, making $4,340.00 for the entire lot.

JAS. B. GALLAWAY.

Subscribed and sworn to before me, this 18th day of May, A. D. 1882.

[SEAL.] HENRY B. MASON,
Notary Public.

260 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the record of all the proceedings had in said court in said entitled cause, wherein said Harmon Pumpelly is the plaintiff and said Asahel Gage is the defendant, as the same appear from the files and records of said court now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, this twenty-fifth day of July, A. D. 1882.

WM. H. BRADLEY,
Clerk.

Endorsed on cover: N. Illinois C. C. U. S. No. 303. Asahel Gage, appellant, *vs.* Maria B. Pumpelly and Adeline P. Kidd, executrixes and heirs-at-law, Edward Wade, executor, and Delphine M. P. Read, heir-at-law of Harmon Pumpelly, deceased. Filed 4th October, 1882.

OFFICE SUPREME COURT U.S.
FILED
FEB 7 1883
JAMES H. McKENNEY, Clerk.

115-454

SUPREME COURT of the UNITED STATES.

OCTOBER TERM, A. D. 1882.

7th

ASAHEL GAGE
vs.
HARMON PUMPELLY.

} Appeal from the Circuit Court of the United States, for the Northern District of Illinois.

MOTION.

EDWARD G. MASON,
ATTORNEY FOR APPELLEES.

BEACH, BARNARD & CO., LEGAL PRINTERS, 104 RANDOLPH STREET.

SUPREME COURT of the UNITED STATES.

OCTOBER TERM, A. D. 1882.

ASAHEL GAGE
vs.
HARMON PUMPELLY.

} Appeal from the Circuit Court of the United States, for the Northern District of Illinois.

MOTION.

Now come, by Edward G. Mason, their attorney, Maria B. Pumpelly, executrix and heir at law, Adeline P. Kidd, executrix and heir at law, Edward Wade, executor, and Delphine M. P. Read, heir at law, of said Harmon Pumpelly, deceased, and suggest to the court that said Harmon Pumpelly departed this life, pending this appeal, and that they are his sole and proper representatives as aforesaid; and they do voluntarily come in and pray to be admitted parties appellees to this suit in place of the said Harmon Pumpelly, deceased.

Inasmuch as this litigation is a bill to remove cloud from title, it is respectfully submitted that those who inherit the title should be made parties in place of their

ancestor. It is also true, however, that the money deposited in court, as hereinafter mentioned, to redeem from taxes, may be considered to belong to the executors of the deceased until accepted by the appellant, and at all events it would ultimately go to the executors in case of a reversal of the suit. For these reasons, therefore, the motion is made to substitute the executors also.

And now the said substituted appellees (if so be this honorable court do substitute them in accordance with their prayer) do respectfully move the court to dismiss this appeal on the ground that the matter in dispute does not exceed the sum or value of five thousand dollars.

Brief in Support of Motion to Dismiss.

The record shows that the appellee brought a bill in the court of orginal jurisdiction to remove the cloud of a tax title on his land. The court granted him the relief sought upon the payment of taxes, penalties and interest, which payment, upon appellant's refusal to receive it, was duly made into court, where it now stands to appellant's credit, and subject to his order. For all expenditures on this property the tax buyer has been reimbursed the uttermost penny, and cannot possibly be injured, therefore, by the summary disposition of the appeal, contemplated by this motion.

The adjudication as to the amount of money due is found in the following copy of the final decree. The statements as to the value of the land appear in the following affidavits and court's opinion, which are printed from the record, and show that the question of value was investigated in the court below. The first, second, third, fourth and fifth affidavits were filed there by the appellant; the remaining affidavits in the same court by the appellee. All of them were incorporated into the record brought up to this court.

Monday, May 15, A. D. 1882.

Harmon Pumpelly
vs.
Asahel Gage. } *Chancery.*

Now comes the complainant, Harmon Pumpelly, by Mason Brothers, his solicitors, and the defendant, Asahel Gage, also comes by Augustus N. Gage, his solicitor, and

the court being now fully advised in the premises, and finding that the said Augustus N. Gage declines to receive from the complainant the sum of one thousand one hundred and eighteen dollars, with interest thereon, at the rate of six (6) per cent. per annum, from the first day of May, A. D. 1882, to the date of payment, and the court also finding that the said complainant has thereupon on this fifteenth day of May, A. D. 1882, caused to be paid to the clerk of this court for the use of said defendant, the sum of eleven hundred and twenty dollars and seventy-nine cents, and has also paid the costs of this suit taxed by the clerk, and that the complainant has in all things complied with the orders and directions of this court:

Doth order, adjudge and decree that the alleged right, title and interest of the said defendant Asahel Gage, in and to the lot, piece and parcel of land, situated in the county of Cook and State of Illinois, and known and described as lot (6), in block fifty (50) Elston addition to Chicago, alleged to have been acquired by the said Asahel Gage, by the payment of taxes and by tax deed to said premises, issued to him on or about September 26, 1877, and by tax deed issued to him, dated February 4, 1880, be and the same are hereby set aside and declared null and void as against the complainant, his heirs and assigns, as a cloud upon the title of the complainant, and that the aforesaid deeds be, and the same are hereby set aside and declared null and void as against the complainant, his heirs and assigns, as a cloud upon the title of the complainant, and that the defendant, Asahel Gage, do deliver up the said deeds to be canceled by the clerk of this court. And thereupon defendant prayed an appeal to the Supreme court, which was objected to by com-

plainant on the ground that the value of the property in controversy does not exceed five thousand dollars, and said prayer for appeal is taken under advisement, with leave to either party to file affidavits by Friday next.

Henry H. Gage, being duly sworn, doth depose and say, he is engaged in the real estate business in the city of Chicago, in said county of Cook aforesaid; that he is acquainted with the value of real estate therein; that he is acquainted with the value of the real estate involved in the above entitled cause, being the land and premises known and described as lot six (6), in block fifty (50), in Elston's addition to Chicago. And that said land and lot is worth the sum of eight thousand two hundred and fifty ($8,250) dollars. And further this deponent sayeth not.

HENRY H. GAGE.

Subscribed and sworn to before a notary public, May 8, 1882.

Eugene H. Fishburn, being first duly sworn, doth depose and say, he is engaged in business in Chicago, in the state aforesaid; that he is acquainted with the value of lot six in block fifty, in Elston's addition to Chicago, and that the same is worth the sum of six thousand six hundred ($6,600) dollars. And further this deponent sayeth not.

EUGENE H. FISHBURN.

Subscribed and sworn to before a notary public, May 17, 1882.

Eli L. Canfield, being first duly sworn, doth depose and say, he is engaged in business in Chicago, in the state aforesaid; that he is acquainted with the values of real estate in said city in said state aforesaid; that he is ac-

quainted with the value of lot six, in block 50, in Elston's addition to Chicago; and that the same is worth the sum of not less than eighty dollars per foot front, or fifty-two hundred and eighty (5,280) dollars for the said lot. And further the deponent saith not.

ELI L. CANFIELD.

Subscribed and sworn to before a notary public, May 17, 1882.

Samuel H. Kerfoot, being first duly sworn, doth depose and say, that he is engaged in business in Chicago, in state aforesaid, that he is acquainted with values of real estate in said city, in said state aforesaid; that he is acquainted with the value of lot six (6), block 50, in Elston's addition to Chicago, and that the same is worth the sum of not less than sixty-six hundred ($6,600) dollars. And further this deponent sayeth not.

SAML. H. KERFOOT.

Subscribed and sworn to before a notary public, May 17, 1882.

Hermann Benze, being first duly sworn, doth depose and say he is engaged in the real estate business in Chicago, Cook county, aforesaid; that he is acquainted with values of real estate in said city and county; that he is acquainted with the value of property involved in the above entitled suit, being the lands and lots known as lot six (6), in block fifty (50), in Elston's addition to Chicago; and that said land and lot is worth the sum of eight thousand two hundred and fifty dollars.

And further this deponent sayeth not.

HERMANN BENZE.

Subscribed and sworn to before a notary public, May 18, 1882.

William D. Kerfoot, being duly sworn, states that he has been engaged in the real estate business in the city of Chicago, county of Cook and State of Illinois, for the period of twenty years, and is now engaged in said business; that he is acquainted with real estate values in said city, and knows the value of lot six (6), in block fifty (50), Elston's addition to Chicago; that the fair market value of said lot is not to exceed four thousand (4,000) dollars.

WM. D. KERFOOT.

Subscribed and sworn to before a notary public, May 18, 1882.

Roswell B. Mason, being duly sworn, states on oath, that he is president of the Chicago South Branch Dock Company, and has had large experience during the twenty years last past in and about the improvement, renting and sale of dock property, in the city of Chicago; that in his best judgment it would require a very large expenditure for docking, dredging and filling to put lot 6, block 50, Elston addition to Chicago, in suitable condition for advantageous use, and that according to affiants best judgment the fair market value of said lot in its present condition does not exceed $3,620.

ROSWELL B. MASON.

Subscribed and sworn to before a notary public, May 19, 1882.

James B. Galloway, being duly sworn, states on oath, that he has for many years had charge of property in Elston's addition to Chicago, and is a part owner of the same; that within the last two years he purchased at private sale a ten-thirty-fifths interest in the property

directly across the river from lot 6, block 50, said Elston's addition, his purchase being a ten-thirty-fifths interest in a tract 100 feet front by 240 to 300 feet deep, with improvements thereon, which improvements consist of the Garden City Glass Works, costing about $20,000, and the price paid for land and improvements was at the rate of $35 per front foot.

Affiant is well acquainted with the premises known as lot 6, block 50, Elston's addition to Chicago, and knows the value thereof. The said premises are situated in the northwest part of Goose Island; they front upon the north branch of the Chicago river, and back upon Cherry street; the land lies very low. There is only surface drainage, and very insufficient; the dock is many years old and rotting to pieces; several sections of it have fallen into the water; Cherry street, upon which the lot is situated, is no thoroughfare, as the bridge to the north across the river is only a railroad bridge and not for passenger travel; the street is neither paved, graded nor sewered; it consists of a single railroad track with one side switch; there is no roadway at all for horses; there are no sidewalks nor gas; there are no improvements of any value. The property upon Goose Island, in the vicinity of Division street and south of Division street, is of a very much better character; there are raised and graded thoroughfares with substantial sidewalks; there the river has been dredged, the lots filled in, and a large amount of new and superior docking made. Goose Island is by nature low and marshy. Real estate values have been created upon some portions of the island by a lavish expenditure in improvements. The upper part of the island, however, including lot six (6) aforesaid, still remains without material improvement. The fair market value of said lot six (6) is

not to exceed $65.00 per front foot, making $4,340 for the entire lot.

JAS. B. GALLOWAY.

Subscribed and sworn to before a notary public, May 15, 1882.

Walter Mattocks, being duly sworn, states that he is the agent for said Harmon Pumpelly, in and about the care and management of said Pumpelly's real estate in the city of Chicago, county of Cook and State of Illinois, and that he is well acquainted with the value of lot six (6), in block fifty (50), in Elston's addition to Chicago; that the adjoining lot 5 in said block, of about the same value, was in good faith, and prior to the decision of this cause, sold by deed made September 23, 1881, for the sum of $3,750, or about $62.50 per front foot, which is the fair market value of the same, that the aforesaid lot 6 is worth not to exceed the sum of $3,750, and was in good faith contracted to be sold for that amount, if cloud were removed from title; and deed of said lot 6, bearing date April 14, 1882, was made and is ready for delivery, the said Pumpelly to receive net said sum of $3,750, less the amount required to redeem said land from taxes and less commissions, and all other charges and expenses of every kind relating to said lot.

WALTER MATTOCKS.

Subscribed and sworn to before a notary public, May 13, 1882.

BLODGETT, J. The defendant has prayed an appeal in this case, which complainant resists on the the ground that the matter in dispute does not exceed $5,000, and affidavits have been filed on behalf of each party touching the value of the lands in controversy. I have considered these proofs and am much inclined to hold that the fair cash value of this property does not exceed $5,000, although it is true that some of the affidavits on the part of the defendant, put the value much higher than that, but the affidavits on the part of the complainant refer to actual sales and transactions which furnish a much more reliable basis of value than these opinions or speculative conclusions. But I dislike by any ruling of my own as to value to deny an appeal to any party who seeks to review my findings upon the main questions in a case. I shall, therefore, allow the appeal, with leave to the appellee to raise the question in the Supreme court, as to whether the amount in controversy is sufficient to enable the defendant to prosecute an appeal. That is, I do not intend by this order, allowing an appeal, to cut off the right, if I could do so, of complainant to move in the Supreme court to dismiss the appeal for want of jurisdiction.

H. W. BLODGETT,
Judge.

THE MOTION TO DISMISS THE APPEAL IS BASED ON THE FOLLOWING GROUNDS:

1. As this is a bill to remove cloud from title upon payment of all taxes due, the amount of taxes and not the real estate is the sum or value involved. The decree shows that the accumulated taxes of years, with accrued interest and penalties, are less than twelve hundred dollars, and the payment of a sum below that amount satisfied the judgment in this case.

In the following case a decision was thus rendered: "The amount involved in this litigation is clearly to be "measured by the sum required to satisfy the judgment, "not by the value of the property sought to be subjected "to its payment."

Walker v. *Malin*, 94 Ill., 596.

That a bill to remove cloud is not, properly speaking, a suit involving the freehold has been decided in Illinois. It was so held where the cloud was an alleged conveyance (*Akin* v. *Lloyd*, 28 Ill., 331), and was so held where the cloud was a tax certificate and would have been a tax deed but for an injunction.

Gage v. *Busse*, 94 Ill., 590.

In the case last quoted a minority of the court thought that the land itself was in controversy, because the defendant (tax buyer) took the appeal. It is respectfully suggested, however, that the defendant should have filed a cross-bill if he wished to give a different character to the controversy from that given by the original bill. No cross-bill was filed in the cases last quoted or in the case at bar.

But even if the land itself is the matter in dispute, the land is not worth five thousand dollars, and this appeal should still be dismissed. The remaining heads of this motion treat of the value of the land.

2. Appellee's witnesses on the subject of value are of greater credibility than those of appellant. This appears from the internal evidence of the affidavits themselves. While appellant's witnesses claim to know the values of real estate in general, and of the property in controversy, yet this is mere assertion; they do not state sufficient facts showing them to possess such knowledge. Only two of them claim to be engaged in the real estate business at all. None of them state the length of their experience or any special facilities for acquiring knowledge, or any investigation of the particular land now under consideration, and they do not attempt a description of the actual condition of the property, yet the actual condition is always a potent factor in determining real estate values. They do not point to any actual sales to corroborate their assertions. They do not employ the well-settled term, "market value," which is really the subject of inquiry, but use the vague and unlimited expression "value," which may mean speculative and prospective; it has an element of the uncertain future in it. One of appellant's own witnesses places the value barely above five thousand dollars. That the statements of appellant's witnesses are mere guess work, appears most conspicuously in the affidavits of the others, one of whom calls the value sixty-six hundred dollars; and others, eight thousand two hundred and fifty dollars. There is a difference of one thousand four hundred dollars between the first and second estimates, and of two thousand nine hundred and seventy between the first and third.

It should be observed that these striking discrepancies occur in the attempted valuation of a single lot, a matter certainly susceptible of more exact computation.

Contrast such statements with the careful valuations of appellees' witnesses. The first one has been engaged in the real estate business for twenty years, and is still engaged in it. From the knowledge gained by this long experience, he places the market value of the lot under consideration at not to exceed four thousand dollars. The second witness for appellees tells his especial knowledge of this class of property, states the kind of expenditures required to make this particular lot useful, and from this specific knowledge of the lot's present condition, places its value at not to exceed $3,620. Appellees' third witness is a property owner on the opposite bank of the river; shows an intimate knowledge of all property in the neighborhood, points out specifically the drawbacks to the lot under consideration, names its value at not to exceed $4,340, and states an actual purchase by himself of better property at a much less rate. The fourth witness for appellees mentions the decisive test of actual sales. The next lot was sold for $3,750, and the lot under consideration is, in good faith, contracted to be sold for the same amount, as soon as cloud can be removed from title.

3. The Circuit court has really decided that the land is not worth $5,000. That was a question of fact, and was directly presented to that court. The court's opinion is plain, although it felt a delicacy about impeding any attempt to review its decisions, and therefore remitted appellee to this tribunal to ask for a dismissal of the appeal upon a question of fact decided by the Circuit court in his favor, upon a preponderance of evidence.

115454

OFFICE SUPT. AND COURT'S
MAR 10 1883

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1882.

ASAHEL GAGE,
Appellant,

vs.

HARMON PUMPELLY,
Appellee.

Appeal from the Circuit Court of the United States for the Northern District of the State of Illinois

Brief Opposing Motion to Dismiss Appeal.

AUGUSTUS N. GAGE,
Solicitor, and of Counsel for Appellant.

ALBERT G. RIDDLE,
Of Counsel.

CHICAGO, ILL.:
S. I. BRADBURY & SONS, LEGAL PRINTERS, 78 FIFTH AVE.
1883.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1882.

ASAHEL GAGE,

Appellant,

vs.

HARMON PUMPELLY,

Appellee.

Appeal from the Circuit Court of the United States for the Northern District of the State of Illinois

Brief Opposing Motion to Dismiss Appeal.

STATEMENT.

MAY IT PLEASE THE COURT:

Counsel for appellee has made two motions in this cause: One to substitute the representatives of the appellee, whose death, *pendente lite*, is suggested. The other is a motion to dismiss the appeal in this cause upon the allegation the jurisdictional amount is not in controversy.

Appellant will oppose, only, the motion to dismiss the appeal.

The facts in the case, so far as they relate to the motion, are:

The record as made, up to the hearing, in the Court below did not show the value of the property in controversy; to present this question affidavits were received from appellant and counter affidavits from appellee, and thereupon an appeal was allowed to this Court.

These affidavits were made a part of the record by the certificate of evidence and are included in the transcript, filed with the clerk of this Court at pages 243 to 257 inclusive

The only question, therefore, for determination upon this motion is whether the transcript shows the amount in controversy to exceed the sum or value of Five Thousand Dollars.

The motion to dismiss is based upon two grounds:

I.

The amount in controversy is to be determined by the amount of money the Court below ordered appellee to pay as a condition precedent to any relief upon his bill, and not by the value of the real estate involved in the litigation.

II.

The real estate in controversy is not shown by the record to be of a value exceeding five thousand dollars.

BRIEF.

I.

The bill in this cause was filed to set aside or extinguish appellant's title to the real estate therein described. It was alleged appellee was the owner of the property; that appellant had purchased the property at tax sales and held two tax deeds thereto; that the tax deeds were void, and prayed to have them removed or cancelled as clouds, etc.

To this bill appellant answered, admitting receiving the tax deeds, asserting their validity, claiming to be the owner of the property in fee by virtue of the deeds, and denying appellee's allegation of title to the land.

This was the issue between the parties, each claimed the title to the land, and by the pleadings the Court was called upon to determine this issue and this only.

The fact, the Court found appellee entitled to relief only upon condition of his paying a certain sum, could in no way change the issue from the real estate to such sum. At least, this would be true, upon appellant's appeal.

Whether it would have such effect had appellee elected to appeal is a question not relevant to this issue.

Counsel has referred to the cases of

Walker v. *Malin*, 94 Ill. 596,

Gage v. *Busse*, 94 Ill. 590,

to sustain the theory a bill to remove a cloud does not affect a freehold. A reference to these cases will show the citation inapt.

Walker v. *Malin*, *supra*, was a creditors bill, filed to subject real estate to the payment of a judgment at law.

The Court held the sum required to satisfy the judgment and not the value of the real estate sought to be subjected to its lien, determined the amount in controversy, for the payment of the judgment would relieve the property from any claim of the judgment creditor. The proceeding was likened unto a bill to foreclose a mortgage, where the amount of the debt secured and not the real estate given in pledge determined the question of the amount in dispute. The proceeding was instituted to collect a debt and the amount of the debt determined the amount in controvesy.

The sum paid by appellee to the clerk in the court below is not before this Court for review neither can a determination in this case affect it. If the cause is reversed it determines the title in the land against appellee, and in favor of appellant. If it is affirmed, the consequences are the reverse, but in either case it is the real estate and not the money deposited in court that is in issue.

Gage v. *Busse, supra*, was a bill enjoining the appellant from taking out a tax deed upon an unexpired certificate of sale. The opinion merely reiterates the well settled proposition, a certificate of sale passes no title to land.

In *Akin* v. *Lloyd*, 28 Ill. 131, cited by counsel, it will be observed the question presented, came to the Court upon error to an order dismissing the bill. The defendant below filed a plea in abatement, which was set down for *argument* and sustained. The bill was dismissed.

Clearly this cannot be relied upon as a case to support counsel's theory, as the question whether a bill to

remove a cloud involved the freehold was not presented upon the plea or otherwise.

Upon this question the Supreme Court of Illinois has announced its unambiguous opinion, and have determined in a proceeding by bill in equity to remove a tax deed as a cloud upon the title of complainant the *freehold was involved.*

Gage v. *Scales*, 100 Ill. 218.

The circumstances of that case and the case at bar are similar, so far as this motion is concerned, and that which is there said is here applicable.

Analogous to the question upon this motion are the cases:

United States v. *Eighty-four Boxes Sugar*, 7 Pet. 433.

Stinson v. *Donsman*, 20 Pet. 461.

The controversy being as to the title to the real estate, it remains to ascertain whether the land is of sufficient value to confer jurisdiction.

II.

By the certificate of evidence certain affidavits were made part of the record, these affidavits are in the transcript at pages 243 to 257. They alone show the value of the property in controversy. Of these affidavits six were adduced by appellant to sustain his motion for an appeal, and they show the property to be of the jurisdictional value. The other four affidavits were introduced by appellee to rebut the facts shown. The weight of evidence is in favor of jurisdiction, and if this evidence can be overcome, it must be upon the theory advanced by counsel for appellee that his witnesses "are of greater creditability than those of appellant."

Appellant insists each affiant is credible, and those who place the value at over five thousand dollars are entitled to equal respect with those who place it at a less sum.

Some comment might be made upon the witnesses Mattocks and Galloway, that the first was the agent of appellant and had charge of his property, the other was a purchaser of property and interested in a low valuation. However, such matters are argumentative, and unnecessary upon the record as it stands.

It is sufficient to say this record discloses no objection to any of the evidence upon this question, and no attempt to impeach any of the witnesses, and therefore the suggestion of counsel for appellee, the witnesses for appellant are incredible is entirely uncalled for.

All of the witnesses for appellant, except Parker E. Baird, say without reservation they are acquainted with the value of the land, and they all unite in saying it is worth a sum of money exceeding five thousand dollars. This is sufficient unless it is overcome by a preponderence of testimony or the impeaching of witnesses neither of which has been done.

Counsel for appellee has purported to copy in his brief *all* the affidavits introduced upon this question, but the Court will observe he has, perhaps inadvertently, failed to present the affidavit of Parker E. Baird, an affiant on behalf of appellant, whose affidavit is transscribed on page 248 of the transcript. This witness makes a search of the public records for conveyances in the block where this lot is situate and gives an abstract of such conveyances as have been recorded therein, together with a plat showing their location and their

relative position and size in comparison with the lot in controversy, and from this affidavit and the records upon which it is based it will be seen, lots immediately north of this, of much less frontage and depth, have been actually conveyed, and the instruments of conveyance recorded, the consideration wherein is much in excess of the jurisdictional amount. From this affidavit the value of the property in controversy can be estimated upon a basis of these actual sales, and by such estimate it is shown to be worth a sum much in excess of five thousand dollars.

The affidavit of Parker E. Baird will be here produced that the Court may more readily ascertain its bearing and importance upon this question:

* * * * * *

PARKER E. BAIRD, being first duly sworn, doth depose and say he resides in Chicago in said State aforesaid, and is engaged in the real estate business therein, that he has examined the records in the Recorder's office of Cook county, in said State aforesaid, for the purpose of ascertaining what conveyances of real estate have recently been made in the neighborhood of the property known as Lot six (6) of Block fifty (50) in Elston's Addition to Chicago, and to learn the consideration in such transfers, and that the said records show a number of sales of property in said Block fifty (50) aforesaid, of which the following is an abstract:

Bryan Lathrop,	}	Trustee's Deed.
		Dated September 9, 1881.
1– to		Recorded Book 1107, Page 563.
Marcellus B. Hagans.	}	Consideration $6,000.00.

North 50 ft. Lot 3, Block 50, Elston's Addition.

Azel F. Hatch and wife to Lidia B. Wellen. } Special Warranty Deed. Dated February 6, 1882. Recorded Book 1193, Page 156. Consideration $10,000.00.

2—

North 60 feet of the South 150 feet of Lot 3 in Block 50, Elston's Addition to Chicago.

Azel F. Hatch and wife to Guy R. C. Allen. } Special Warranty Deed. Dated February 6, 1882. Recorded Book 1193, Page 155. Consideration $10,000.00.

3—

North 58 feet of the South 90 feet of Lot 3 in Block 50, Elston's Addition.

Azel F. Hatch and wife to Delia A. Evans. } Special Warranty Deed. Dated February 6, 1882. Recorded Book 1193, Page 157. Consideration $10,000.00.

4—

South 32 feet of Lot 3 and North $23.\frac{25}{100}$ feet of Lot 4 in Block 50 in Elston's Addition.

Azel F. Hatch and wife to Mary M. Wagner. } Special Warranty Deed. Dated February 6, 1882. Recorded Book 1193, Page 158. Consideration $10,000.00.

5—

South $55.\frac{25}{100}$ feet Lot 4, Block 50 in Elston's Addition to Chicago.

And this deponent says that attached hereto is a plat of said Block 50 in said Elston's Addition, and marked thereon in red ink to show the locality and size thereof, is a plat of the pieces of real estate mentioned in the above conveyances and that the numbers marked in red ink on said plat are placed thereon to identify them with the numbers in the abstract in this affidavit respectively.

And further this deponent sayeth not.

PARKER E. BAIRD.

* * * * * *

Because of the matters and things aforesaid, appellant insists this Court has jurisdiction of the appeal herein, and respectfully submits the motion to dismiss should be denied.

AUGUSTUS N. GAGE,
Solicitor and of Counsel for Appellant.

ALBERT G. RIDDLE,
Of Counsel.

115-454

Office Supreme Court U. S.
FILED.
MAR 28 1885
JAMES H. McKENNEY.
CLERK.

IN THE

Supreme Court of the United States,

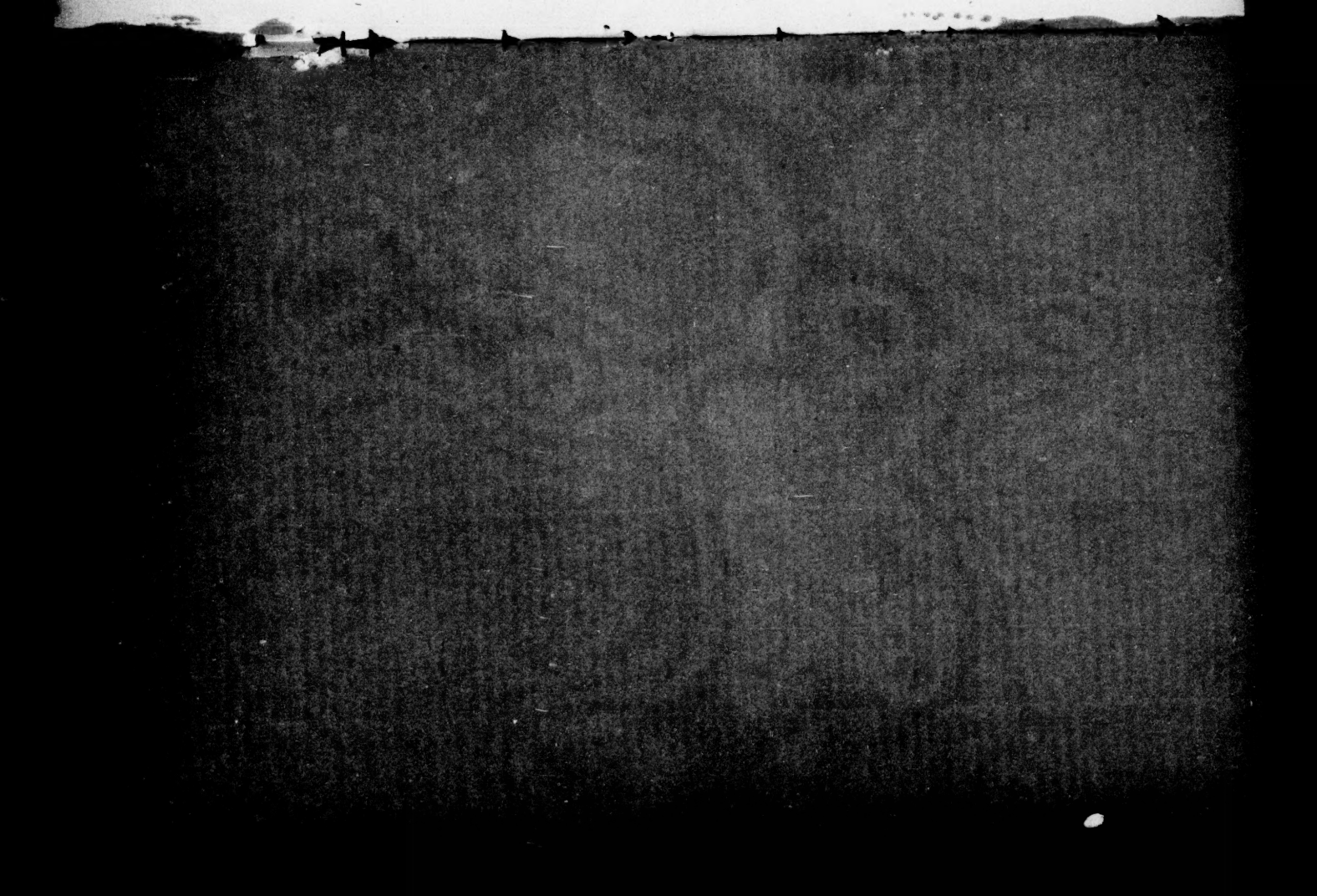
OCTOBER TERM, A. D. 1884.

GAGE
vs.
PUMPELLY ET AL.

BRIEF IN BEHALF OF APPELLEES.

EDWARD G. MASON,
ATTORNEY FOR APPELLEES.

BARNARD & GUNTHORP, LAW PRINTERS, 44 & 46 LASALLE ST., CHICAGO.



IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1884.

GAGE
vs.
PUMPELLY ET AL.

This bill was filed by the owner of real estate in possession of the same to set aside two tax deeds upon his land (transcript of record 2-5, 17, 26). The Circuit court granted the relief upon payment into court of the redemption money imposed by the Illinois statute, the tax buyer having declined to receive the money because he wished to appeal to this court. (Transcript of record, 21-23, 104.)

Appellees hereby assign as a cross-error in this cause that the decree requires the payment of the redemption money allowed by statute, had the judgments and sales been for the proper amount of taxes (transcript of record, 22), whereas only the appellant's actual investments with six per cent. interest should be refunded to him.

Brief in Behalf of Appellees.

I.

Only appellant's actual investments with six per cent. interest should be refunded to him.

People v. *Peacock*, 98 Ill., 172.
Edwards v. *Hill*, 11 Ill., 22.
Reed v. *Tyler*, 56 Ill., 288.
Smith v. *Hutchinson*, 108 Ill., 662, 669.
Gage v. *Busse*, 102 Ill., 595, *criticised.*

II.

Bill in chancery is the proper remedy in this case; the owner could not bring ejectment because he was in possession of the land (transcript of record, 17, 18, 26).

Gage v. *Abbott*, 99 Ill., 366.

III.

Appellees are entitled to relief, because the County court had no jurisdiction to enter the two judgments upon which the tax deeds rest. The first judgment embraced double pay to the county commissioners. (Transcript of

record, 3, 29, 42.) The second judgment embraced unlawful items for entertaining official visitors and interest upon obligations (so-called) in excess of the constitutional limitation of the debt of the city of Chicago, where the land is situated. (Transcript of record, 4, 28, 32, 52–62.)

Fees & Salaries, cap. 53, sec. 39, Ill. Rev. Stat., Art. IX, sec. 12, Constitution of Illinois.

Law et al. v. *People ex rel. Huck*, 87 Ill., 385.

McLaughlin v. *Thompson*, 55 Ill., 249.

Belleville Nail Co. v. *People*, 98 Ill., 399, 403.

Gage v. *Busse*, 102 Ill., 595.

Geekie v. *Kirby Carpenter Co.*, Vol. XI. Chicago Legal News, p. 400.

Campbell v. *State*, 41 Ill., 455.

Allen v. *Peoria R. R. Co.*, 44 Ill., 85, 90.

Ellwell v. *Shaw*, 1 Greenleaf, 339.

Drew v. *Davis*, 10 Vermont, 506.

Stettson v. *Camden*, 13 Mass., 272.

Kemper v. *McClellan*, 19 Ohio, 308.

Lacy v. *Davis*, 4 Mich., 140.

McQuilkin v. *Doe*, 8 Blackf., 581.

Noble v. *Indianapolis*, 16 Ind., 506.

Dogan v. *Griffin*, 51 Miss., 782.

Rhodes v. *Sexton*, 33 Iowa, 540.

Pierce v. *Schutt*, 20 Wis., 423.

Treadwell v. *Patterson*, 51 Cal., 637.

Bucknell v. *Story*, 36 Cal., 67.

Hardenberg v. *Kidd*, 10 Cal., 402.

IV.

Appellees are entitled to relief, because the tax deeds were issued without the preliminary notice required by statute to be given to occupants and to owners and persons interested in the land. (Transcript of record, 3, 31, 50, 101.)

Art. IX., sec. 5, Const. of Ill.
Ill. Rev. Stat., cap. 120, sec. 216, 217.
Wilson v. *McKenna*, 52 Ill., 43, 48.
Barnard v. *Hoyt*, 63 Ill., 341.
Gage v. *Bailey*, 100 Ill., 530.

ARGUMENT.

Appellees submit that the decree was erroneous in requiring the payment of the redemption money allowed by the statute had the judgments and sales been for the proper amount of taxes. The statute, in case of a valid sale allows in two years one hundred per cent. bonus on the original investment of the purchaser at tax sale.

"Real property sold under the provisions of this act "may be redeemed at any time before the expiration of "two years from the date of sale by payment of * * * "the amount for which the same was sold, and * * if re- "deemed * * between eighteen months and two years, "one hundred per cent. on the amount for which the same "was sold."

Ill. Rev. Stat., cap. 120; Revenue Act, sec. 210.

In the case at bar, however, the tax judgments, sales and deeds being found erroneous, equity would only require from the land owners, as a condition of relief, the repayment of the tax-buyer's actual investment with six per cent. interest. Equity awards compensation but does not inflict penalties. A provision of the revenue act, requiring one per cent. a month in certain cases on the amount of a tax, was held to be highly penal.

People v. *Peacock*, 98 Ill., 172.

Certainly, therefore, the provision under discussion in this case, which requires over four per cent. a month, is still more penal. But to collect a penalty there must be the strictest adherence to the forms of law.

Edwards v. *Hill*, 11 Ill., 22.

Accordingly we find it to be the established rule in Illinois that no penalty is imposed in equity as a condition of relief from an erroneous tax deed, but the holder of the deed is simply reimbursed for his expenditures, with six per cent. interest.

Reed v. *Tyler*, 56 Ill., 288.

In the foregoing case, the court commenting on an old statute requiring the payment of the statutory redemption money as a condition precedent to questioning the validity of a tax deed, hold that such a statute "must be held to "be nugatory."

But in March, 1882, just before the case at bar was decided, there appeared a decision of the Supreme court of Illinois, in

Gage v. *Busse*, 102 Ill., 595.

imposing the statutory penalty as a condition of relief from

an erroneous tax deed. We have shown above, however, that such a rule is wrong in principle, and that it is opposed to the established law of Illinois. The true principle is affirmed in the latest decision of the Illinois Supreme court,

Smith v. *Hutchinson*, 108 Ill., 662, 669.

that the tax investment must be refunded with interest.

The remainder of our argument is devoted to showing that appellees were entitled to relief on account of the invalidity of appellant's claims. The evidence shows that the judgment for the taxes of 1873, upon which judgment the first tax deed rests, embraced a payment of five dollars per day for each county commissioner. (Transcript of record, 3, 29, 42.) This was illegal, because the statute expressly limits their compensation to half that sum per day.

"The members of the board of supervisors and the "board of commissioners of Cook county shall each re- "ceive the sum of two dollars and fifty cents per day for "the time actually and necessarily engaged in the dis- "charge of his duties as a member of such board of "supervisors, to be paid on the order of the board out of "the county treasury, and mileage, five cents each way, "for necessary travel, and no other allowance or emolu- "ment, directly or indirectly, for any purposes whatever."

Fees and Salaries, Cap. 53, Sec. 39, Illinois Revised Statutes.

So, also, the evidence shows that the judgment for the taxes of 1875, upon which judgment the second tax deed rests, embraced items for entertaining official visitors and interest upon obligations (so called) in excess of the con-

stitutional limitation of the debt of the city of Chicago, where the land is situated. (Transcript of record, 4, 28, 32, 52–62.) Those items of the tax of 1875 have been declared to be illegal in the case of

Law et al. v. *People ex rel. Huck*, 87 Ill., 385.

"No county, city * * * or other municipal cor-
"poration shall be allowed to become indebted in any
"manner, or for any purpose, to an amount, including
"existing indebtedness, in the aggregate exceeding five
"per centum on the value of the taxable property
"therein. * * * "

Art. IX., Sec. 12, Const. of Illinois.

Appellant in his brief strives to show that a judgment by a court having jurisdiction can not be collaterally attacked. This is wholly useless here. We are entitled to relief because the County court had no jurisdiction to enter the judgment complained of. If, for instance, a city is forbidden by statute or by constitution to levy a tax exceeding one million dollars, and levies one of two millions, no court has jurisdiction to enter judgment for more than the million dollars. In any case, a judgment for taxes is conclusive *only* upon a person who appears and defends.

The general doctrine as to tax sales, like the one in question, is laid down in Cooley on Taxation, page 344, as follows:

"An excessive levy is void, whether it is made exces-
"sive by including with the lawful taxes those which
"are unlawful, or in any other manner. When the levy
"would be void, of course there would be nothing to up-

"hold the sale. And if a valid levy were to be increased "afterwards by unlawful additions, the sale would be "equally bad. A sale for anything more than is lawfully "chargeable is a sale without jurisdiction, and therefore "void."

Blackwell on Tax Titles, page 160, says:

"If land be sold for the non-payment of divers taxes, "one of which is illegal and the residue legal, the sale is "void. The land must be liable for all the taxes for "which it was sold."

It is settled in Illinois that the owner of real estate is not obliged to take a writ of error or appeal from the judgment of the County court imposing an illegal tax, but the question of illegality will be considered in a new suit brought to uphold or annul the tax deed. Thus, in the ejectment suit of

McLaughlin v. *Thompson*, 55 Ill., 249, 251.

the court say:

"The evidence shows that this county tax entered into "and formed a part of the judgment, and the sum for "which the land was sold. That tax being illegal, appel- "lant or those under whom he claims were not required "to pay it, nor did the law impose the duty of redeeming "from the sale. And it has been repeatedly held that if "any portion of the tax is illegal, or the judgment is too "large only to the extent of a few cents, the sale and tax "deed will be void."

Relief against a tax sale was granted in *Belleville Nail Co.* v. *People*, 98 Ill., 399, 403, where the real estate owner did not appear and contest in the County court. The court say:

"The company did not appear and become a party in "the proceedings in which those judgments were rendered "and make objections against their rendition; and we re- "gard them as of no binding force against this company, "and that it is open to the company to show that the lot "was not liable for the payment of said taxes, although "such judgments were rendered. In *Graceland Cemetery* "*Company* v. *The People*, 92 Ill., 619, we held where the "owner of land appeared in such a proceeding, filed ob- "jections and contested the liability of his land for the tax "claimed, that the judgment against the land for the tax "was conclusive against him of the liability of the land "for the tax in a collateral proceeding. But it is only in "the case of such appearance and defense that we regard "the judgment as conclusive. The statute in declaring in "section 224 that the tax deed made upon a sale under a "judgment for taxes, shall be *prima facie* evidence of cer- "tain enumerated things, which are requisite to a correct "judgment, shows the intention of the statute that the judg- "ment was not to have the same effect of conclusiveness "which is given, collaterally, to ordinary judgments ren- "dered by default, where personal service has been had. "There is in these cases no personal service, but only "publication of notice in a newspaper that application will "be made for judgment."

So also in the case of *Gage* v. *Busse*, 102 Ill., 595, which was a bill in chancery to set aside a tax sale on the ground that a portion of the tax was illegal, the court assumed, in harmony with the settled law of the state, that the judgment under which the tax sale was made, could be inquired into, but laid down the rule that, as a condition of obtaining relief, in equity, the real estate owner must pay the redemption money allowed by statute, had

the judgments and sales been for the proper amount of taxes, to be ascertained by deducting the erroneous tax in each case from the amount of the judgment. This ruling has been followed in the present case. (See stipulation and decree, transcript of record, 104 and 21–23.)

The decision of Drummond, J. in the United States Circuit court for the Eastern district of Wisconsin, is found in *Geekie* v. *Kirby Carpenter Co.*, Vol. XI. of Chicago Legal News, 400. This was a suit involving the ownership of real estate, title being claimed under a tax deed, which had been on record more than three years before the litigation commenced. The court held that where there was included in the amount for which the land was sold at tax sale, something in excess of the legal amount of taxes, the sale was unauthorized and void, and no title to the land could be obtained under it. The illegal excess was small, but the court say, "the principle is the same "whether the amount was small or large."

In Maine, the case of *Elwell* v. *Shaw*, 1 Greenleaf, 339, was one in which $10.13 of the tax sold was illegal. The court says: "The proceeding to make sale of the land in "question for the non-payment of all the taxes, renders "the sale void, notwithstanding the assessment of a part "of them is not liable to objection."

In Vermont the case of *Drew* v. *Davis*, 10 Vermont, 506, was one in which the tax was $18.80, of which $15.37 was legal, and $3.41 was illegal. The latter was levied for the purpose of building a jail. The court says: "The tax allowed for an object not within the corporate "purposes or powers of the town, and which the corporation could not legally impose, was blended in the outset "by the vote granting it, with a tax for legitimate pur-

"poses, and was so assessed." * * * "Hence the "whole proceeding was declared void."

In *Stettson* v. *Camden*, 13 Mass., 272, a tax warrant, partly illegal and partly legal, was held void under the doctrine that when the purpose of a tax is illegal, all the proceedings to collect it must be void.

In *Kemper* v. *McClellan*, 19 Ohio, 308, a tax sale for taxes, a portion of which were levied by commissioners in excess of their powers, was held invalid, the court saying: "When the power of commissioners is so limited, "a tax of any greater amount is unauthorized and void. "In every case where an individual tax is upon trial "shown to be greater than the amount authorized, the "sale of land for the payment of such taxes will be "deemed void; and certainly a general tax must be void "when no power exists for levying it."

Substantially the same doctrine is laid down in *Lacey* v. *Davis*, 4 Mich., 140. *McQuilkin* v. *Doe*, *etc.*, 8 Blackford, 581, was a case in Indiana, in which the plaintiff, in an ejectment suit, relied upon a tax deed, but omitted on the trial to show that eighty cents of the tax were lawfully assessed and levied. The court refused to admit the deed in evidence, saying: "Unless the land was liable for "all the taxes for which it was sold, the sale cannot be "sustained."

And this is affirmed in *Noble* v. *Indianapolis*, 16 Ind., 506, which says: "It is admitted that to render a sale for "taxes valid, all the taxes to collect which the sale is "made must be legal."

There is a strong case in 51 Miss., 782 (*Dogan* v. *Griffin*). A part of the Mississippi state taxes for 1861

was levied for what was known as "the military convention," and was illegal. A tax deed (issued on a sale for other taxes and this one) was held invalid. "The court "is very clearly of the opinion, in accordance with the "unanimous course of decisions in all the courts of the "other states, that a valid title to real estate cannot be "obtained by the sale for a tax, a part of which is illegal "and void, and a portion of which is legal. So uniform "are the decisions that discussion is considered super-"erogatory. The adjudications declaring this rule are "very numerous. * * * A sale of realty upon such "a tax conveys no title."

In Iowa, the revision of 1860, paragraphs 753 and 762, incorporated in the statute the provision that a tax sale should be valid if only a part of the taxes was legal; and in the case of *Rhodes* v. *Sexton*, 33 Iowa, 540, the Supreme court says that the rule is that if the sale is illegal, as to any portion of the taxes, it is illegal as to the whole, and the deed is therefore void; but that this rule in Iowa has been reversed by express statutory provisions.

In *Pierce* v. *Schutt*, 20 Wis., 423, a sale for $24.11, when only $22.91 was lawfully due, was held void.

In California, in *Treadwell* v. *Patterson*, 51 Cal., 637, the tax sale was for $31.47, when only $31.11 was lawfully due. The court affirms the passage from Cooley already cited, and says:

"The rule, as established upon authorities, is, that if "the excess be as much as the smallest fractional coin "authorized by law, the sale is void."

Bucknell v. *Story*, 36 Cal., 67.

In *Hardenberg* v. *Kidd*, 10 Cal., 402, the state taxes

were legal, the county illegal; the sheriff sold land for both, the sale was held void.

Appellant has cited

Chestnut v. *Marsh*, 12 Ill., 173,

which allows a collateral attack on a judgment for taxes, and claims that it is obsolete law on account of the repeal of a special statute. An examination of the case however, shows that this was a restraining statute, confining a collateral attack on the validity of a tax judgment, to fonr specified grounds. The repeal of this statute, therefore, broadens the grounds of attack. See the case, heretofore cited, of

McLaughlin v. *Thompson*, 55 Ill., 249, 251.

The cases of

Graceland Cemetery v. *People*, 92 Ill., 619,
People v. *Smith*, 94 Ill., 226,

were cited by appellant to prove that a judgment for taxes is conclusive unless reversed by a direct proceeding for that purpose. This is only true, however, when the real estate owner appeared and became a party to the proceedings, in which the tax judgment was rendered. Such is the express decision of the Illinois Supreme court in the case of

Belleville Nail Co. v. *People*, 98 Ill., 399, 403,

from which we quote as follows:

"In *Graceland Cemetery Co.* v. *The People*, 92 Ill., 619, "we held where the owner appeared in such a proceed- "ing, filed objections and contested the liability of his land "for the tax claimed, that the judgment against the land "for the tax was conclusive. But it is only in the case of "such appearance and defense that we regard the judg- "ment as conclusive."

See more extended citation from this case in the first part of our argument. Appellee did not appear and defend in the proceedings, under which the tax judgments were entered (transcript of record, 64, 77), and therefore he is not concluded by them. The foregoing case also discriminates between a tax judgment and judgments in general: "* * * the judgment was not to have the "same effect of conclusiveness, which is given collaterally "to ordinary judgments rendered by default, where per- "sonal service has been had. There is in these cases no "personal service, but only publication of notice in a "newspaper that application will be made for judgment."

Ibid., p. 403.

This disposes of appellant's cases about judgments based on personal service on defendants by showing that those decisions do not apply to tax judgments.

Appellant claims that the allegations of the bill are not sufficient to sustain the decree, because the bill only attacks a portion of the taxes, for which the land was sold. The evidence shows that in each of the two tax sales a joint execution issued for all the taxes, and the property was sold under that execution for the sum of all the taxes. Appellee could not have redeemed from any portion of the sale, but only from the whole (Ill. Rev. Stat., cap. 120, sec. 210), as the illegal portion of the taxes was extended with the legal portion. It entered into and formed a part of the taxes, for which the land was sold.

"A judgment cannot be rendered for taxes a part of "which are shown by the record to be illegal."

Campbell v. *State*, 41 Ill., 455.

In the following case a portion of the tax was legal and another portion illegal, as in the case at bar, and the court say: "Had an application been made for a judgment "against real estate, and had the sale been made under "an order of the court for the entire sum levied, there "can be no question that it would have been illegal."

Allen v. *Peoria R. R. Co.*, 44 Ill., 85, 90.

Appellant claims that appellees had a legal remedy under sections 213, 214 of the revenue act (Chap. 120). Section 213 allows the county clerk, when he is satisfied "that any tract or lot was sold which was not subject "to be taxed, or upon which taxes or special assessments "had been paid previous to the sale," to make an entry of error in the sale. These lots were subject to be taxed, and the taxes were not paid. Section 213, therefore, has no bearing on the case. Section 214 allows a purchaser at an erroneous sale to recover subsequent taxes paid by him from the owner. This, also, has not the remotest application to the case.

Again, relief was properly granted to the appellee in the case at bar, because the tax deeds were issued without the proper preliminary notice required by the constitution and statute.

It will be seen from an examination of the evidence (transcript of record, 103, 27, 47), that during the year 1876, when the first tax deed was issued, one Celia J. Bracken was the owner of the land, subject to a trust deed to Ira Scott with reversion to Frank C. Taylor, the trust deed being given to secure an indebtedness due Harmon Pumpelly. Affidavits, which the statute says "shall be *prima facie* evidence,"

Ill. Rev. Stat., Cap. 120, Sec. 217,

show that the only services of notice were made on two unknown persons named Bassett and Hammond and on Thomas Armstrong, who had long ceased to be the owner of the property. No service was made on Bracken, Scott, Taylor or Pumpelly, either personally or by publication, and no reason shown for not serving them. At that time and long before that time, the public records showed the ownerships of Bracken, and the lien of the trust deed; it also showed the residences of Scott, Taylor, and Pumpelly. The evidence shows, moreover, that Scott and Taylor at that time, and long prior and subsequent thereto, had each one his residence and office in the city of Chicago. Notice ought to have been given to Bracken, Scott, Taylor and Pumpelly.

Article IX., Sec. 5, Constitution of Illinois, A. D. 1870, says: "And the general assembly shall provide by law "for reasonable notice to be given to the owners or "parties interested, by publication or otherwise, of the "fact of the sale of the property for such taxes or assess-"ments, and when the time of redemption shall expire; "provided that occupants shall in all cases be served "with personal notice." While the affidavit in the case at bar states that Armstrong was the occupant of the land, and that he received personal notice, yet no sort of notice is served on the owners or parties interested. The tax buyer seems to have carelessly proceeded on the theory that Armstrong was then the owner because he had been the owner a year before, and he seems to have made no search of the records for conveyances or incumbrances; or else he proceeded on the theory that the constitution of 1848 was still in force, for the affidavit states that the land was taxed in no name; and the constitution of 1848 only required notice to be served on owners or interested

persons in case the land happened to be taxed or assessed in their names.

"In like manner he shall serve on the person or per-"sons in whose name or names the land or lot is taxed, a "written * * notice. * *"

Ill. Const., 1848, Art. IX., Sec. 4.

The constitution of 1870, heretofore cited, very wisely requires notice to owners and interested persons, independent of the accidental circumstances whether the land is taxed in their names or not. The omission of their names in the tax list would be a mere mistake of the revenue officials, and owners and interested persons ought to have been prejudiced by it. It is true that the general assembly did not immediately pass the law required by the constitution of 1870. The question does not appear to have arisen, and it was not until 1879, that such a law was passed.

"Such purchaser or assignee shall serve * * notice "of such purchase on * * the owners of or parties "interested in said land or lot, if they can upon diligent "enquiry be found in the county. If [they] upon diligent "inquiry cannot be found in the county," then notice can be given them by publication or by service on their tenants.

Cap. 120, Sec. 216, Ill. Rev. Stat., Ed. 1881.

Up to that time a law in conformity with the constitution of 1848 still lingered on our statute book.

"Such purchaser or assignee shall serve * * * "notice of such purchase on * * * the person in "whose name the same was taxed or specially assessed. * *"

Cap. 120, Sec. 216, Ill. Stat., Ed. 1877.

A legislature could not, however, take away a constitutional right by neglecting to provide machinery for its enforcement; the old statute could not exist in defiance of the new constitution; some notice to owners and parties interested was required by the constitution, and during the time when the legislature failed to enact what notice should be given, probably the only legal notice would have been the common law notice, that is by personal service. In the case at bar, however, it is unnecessary to speculate on the particular kind of notice to be given to owners and interested persons, whether a personal notice or a publication notice, for the affidavit shows that no notice whatever was given them.

That a tax deed is invalidated by failure to give the notice required by law, see

Wilson v. *McKenna*, 52 Ill., 43, 48.
Barnard v. *Hoyt*, 63 Ill., 341.
Gage v. *Bailey*, 100 Ill., 530.

The second tax deed is also invalidated by failure to give the notice required by law. The constitution and both the old and new statutes are imperative that occupants shall in all cases be served with personal notice before the time of redemption expires. See the provisions heretofore quoted in

Art. IX., sec. 5 Const. of Ills., 1870.
Cap. 120, sec. 216, Ill. Rev. Stat.
Cap. 120, sec. 216, Ill. Stat., ed. 1877.

Where notice is required to be given to a particular person this is imperative, even if such person does not claim any interest or ownership, for courts have not the discretion to dispense with any portion of the revenue act.

Barnard v. *Hoyt*, 63 Ill., 341.
Chappell v. *Spire et al.*, 106 Ill., 472.

Now, one affidavit in support of this tax deed (transcript of record, 92), states that on February 18, 1879, one Niel Gillespie was the only actual occupant, and was then served with personal notice, at least three months before the expiration of the time of redemption. The next affidavit (page 92) states that on March 4, 1879, Mrs. Niel Gillespie was the only actual occupant, and was then served with personal notice, being at least three months before the expiration of the time of redemption. There is only one affidavit therefore as to Niel Gillespie being the sole actual occupant, and one affidavit as to Mrs. Niel Gillespie being the sole actual occupant. These affidavits are only *prima facie* evidence, and they are each contradicted by three disinterested persons, who appeared in court, testified and were subject to cross-examination (transcript of record, 27, 30, 31), and they are unanimous and unshaken in their evidence that from September, 1877, to September, 1880, a family by the name of Glasby, consisting of H. Glasby, the husband, Mary, his wife, and Frank, his son, occupied the real estate in controversy. Two of the witnesses are the wife and son; the third a former receiver of the property, appointed in a foreclosure suit. Appellant called no witnesses to disprove their testimony. It is therefore established by an overwhelming preponderance of evidence that the Glasby family were actual occupants of the property at the period when the time of redemption expired, October 3, 1879, and long prior and subsequent thereto. Appellant's evidence does not claim that they received notice. For lack of notice to them, the second tax deed must therefore fall. In addition to cases heretofore cited, see for decision directly in point on the above state of facts,

Smith v. *Gage*, 11 Bissell (U. S. Cir. Ct.), 217, 221.

Appellant seeks to set up a former suit in bar or abatement to the present action. It will be seen by the transcript of record, however (p. 109), that the former suit was expressly dismissed *without prejudice* to appellee's rights to bring suit, if he should thereafter become possessed of a title to the land, the court holding that this first suit had been prematurely brought before the appellee's purchase of the land under the foreclosure of the trust deed; at the time of the first suit he was merely the owner of the note, secured by the trust deed. Appellee's fee simple title at the time of the present suit is admitted. (Stipulation in transcript of record, p. 103.)

To sum up, appellant's tax deeds are void on account of illegality in the judgments for taxes, and on account of illegality in the notices for tax deeds. He suffers not the slightest hardship by the decree in the case which awards him the legal amount of the taxes with one hundred per cent. additional, and interest on the aggregate amount, an award which, in fact, restores to him his full investment in the property with interest and an enormous bonus besides. Moreover, all costs in the Circuit court are taxed against appellee. In respect to the bonus awarded appellant, we have seen that the decree should be revised by awarding him only his actual investment with six per cent. interest.

Respectfully submitted.

EDWARD G. MASON,
Attorney for Appellees.

116-454

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IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1884.

No. 303.

ASAHEL GAGE, *Appellant*,

vs.

MARIA B. PUMPELLY AND ADELINE P. KIDD, EXECUTRICES AND HEIRS AT LAW, EDWARD WADE, EXECUTOR, AND DELPHINE M. P. READ, HEIR AT LAW OF HARMON PUMPELLY, DECEASED.

BRIEF FOR APPELLANT.

AUGUSTUS N. GAGE,
Solicitor for Appellant.

ALBERT G. RIDDLE,
Of Counsel.

CHICAGO:
PRINTED BY THE CHICAGO LEGAL NEWS COMPANY, 175 MONROE STREET.
1885.

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Appeal from the Circuit Court of the United States for the Northern District of Illinois.

BRIEF FOR APPELLANT.

STATEMENT OF THE CASE.

MAY IT PLEASE THE COURT:

This is a bill in equity, brought by appellee against appellant, to remove as clouds from the title to certain real estate in the city of Chicago, Illinois, two sources of title evidenced by two tax deeds.

The title to the land is in appellee, unless divested by one of the sources of title held by appellant and evidenced by the tax deeds.

Appellant claims the fee to the lot by two sources, *first*, by a tax title, evidenced by a deed dated September 6, 1876, and *second*, by a tax title evidenced by deed dated February 4, 1880.

The bill charges the first deed is void because there was no notice of the tax sale served upon certain persons interested in the land, and there was extended against the property certain items of tax for county purposes, consisting of $3,700 for compensation of the county commissioners in excess of the compensation allowed by law.

The second deed is sought to be set aside because it is alleged certain items of the city tax of the city of Chicago, in excess of the limitation placed upon the city by the constitution of the State of Illinois, were extended against the property in the levy for the year 1875.

The answer denies these allegations of the bill. It is insisted by the answer, there was a judgment of a court of record, *in rem* against the land, for the sale thereof for the delinquent taxes; that such judgment is in full force and effect, and that appellee is estopped by such judgment from collaterally assailing the regularity of the sale made under its authority.

Upon the hearing a decree was entered in favor of appellee, and the cause is presented here for review upon appeal, and the following

ASSIGNMENT OF ERRORS.

And now comes the said Asahel Gage, by Augustus N. Gage, his solicitor, and says that in the record and proceedings aforesaid there is manifest error in this, to wit:

1st: The court below erred in rendering decree against appellant in substance, manner and form as aforesaid.

2nd: The court below erred in setting aside the title of appellant evidenced by the tax deed issued to him September 6, 1877, in substance, manner and form as aforesaid.

3rd: The court below erred in setting aside the title of appellant evidenced by the tax deed issued to him on the fourth day of February, 1880, in substance, manner and form as aforesaid.

4th: The court below erred in receiving evidence tending to collaterally attack the judgment of the County Court of Cook County, Illinois, against the objection of appellant.

5th: The court below erred in not dismissing the bill at the trial for want of equity.

6th: The court below erred in its finding of facts.

7th: The court below erred in its conclusions of law.

And the said Asahel Gage, appellant, prays that the order and decree aforesaid may be reversed, annulled and altogether held for naught, and that he may be restored to all things which he hath lost by occasion of the order and decree aforesaid.

AUGUSTUS N. GAGE,
Solicitor, and of Counsel for Appellant.

ARGUMENT.

I.

THE SERVICE OF NOTICE UPON WHICH THE TAX DEED ISSUED TO APPELLANT SEPTEMBER 6, 1877, AND THE AFFIDAVITS FILED WITH THE COUNTY CLERK TO SHOW SUCH SERVICE OF NOTICE, WERE SUFFICIENT TO AUTHORIZE THE COUNTY CLERK TO ISSUE THE DEED TO APPELLANT.

The law in force at the time of the service of the notice of this sale is to be found in chapter 120 of the Revised Statutes of Illinois of 1874. By section 216 of that act it is provided, "Hereafter no purchaser or assignee of such purchaser of any land, town or city lot, at any sale of lands or lots for taxes or special assessments due, either to the State or any county or incorporate town or city within the same, or at any sale for taxes or levies authorized by the laws of this State, shall be entitled to a deed for the lands or lots so purchased, until the following conditions have been complied with, to wit: Such purchaser or assignee shall serve, or cause to be served, a written or printed, or partly written and partly printed, notice of such purchase on every person in actual possession or occupancy of such land or lot, and also the person in whose name the same was taxed or specially assessed, if upon diligent inquiry he can be found in the county, at least three months before the expiration of the time of redemption on such sale, in which notice he shall state when he purchased the land or lot, in whose name taxed, the description of the land or lot he purchased, for what year taxed or specially assessed,

and when the time of redemption will expire. If no person is in actual possession or occupancy of such land or lot, and the person in whose name the same was taxed or specially assessed, upon diligent search and inquiry, can not be found in the county, then such person or his assignee shall publish such notice in some newspaper printed in such county. * * *"

It will be seen it was necessary for the purchaser to serve a notice upon the occupant, if the land was occupied, and upon the person in whose name the property was taxed if it was taxed in any name; if it was not taxed in any name or the person in whose name it was taxed could not upon diligent inquiry be found, and there was no person in possession of the property, then only did it become the duty of the purchaser to publish a notice in a newspaper.

The ground upon which relief is asked by the bill is based upon a failure to serve with notice, certain parties in interest not in possession. It is true the bill alleges that Thomas Armstrong was not in the actual possession of the property, but this allegation is not attempted to be sustained by the proof and was abandoned at the trial. The only evidence upon this question was the affidavit of U. George Taylor, who swears that Armstrong was the actual occupant of the property. This leaves the question, simply upon the construction of the statute, whether it was necessary to serve the owners or parties in interest in the land. The affidavit of U. George Taylor, upon which the deed was issued, (page 50, printed record) states that he served the occupant, Thomas Armstrong, on June 21, 1876. This is a sufficient service of notice. Section 216 Ch. 120, *supra*, has received frequent constructions from the Supreme Court of Illinois, and it has been uniformly

held that where the notice was served upon the occupant of the property, and the property was taxed in no name, the service was sufficient to authorize a deed to the purchaser at the tax sale.

In the case of *Garrick* v. *Chamberlain*, 97 Ill. 620, in the course of the opinion, at page 637, the court uses this language: "An objection is made to the sufficiency of one step in the proceeding which was taken subsequent to the judgment, besides want of evidence of a precept which has been considered, and that is, the notice of the sale of the property for the taxes—that the notice was given only to the person in the actual possession of the lot, and not also to the owner of the lot, Fitch. And section 5, of article 9, of the Constitution, is relied on: that the General Assembly shall provide by law for reasonable notice to be given to the owners or parties interested, of the fact of the sale of property for taxes, provided that occupants shall, in all cases, be served with personal notice. The law which the General Assembly has passed in pursuance of this provision (Rev. Stat. 1874, p. 893, § 216) is, that notice shall be served on every person in actual possession or occupancy of the property, and also the person in whose name the same was taxed, or specially assessed, if, upon diligent inquiry, he can be found in the county; the service of notice to be at least three months before the expiration of the time of redemption. Proof was made of the service of the notice on April 20, 1872, upon the person who was in actual occupancy of the premises, and that he was the only one in such occupancy, and that the lot was not assessed in the name of any person. *This we regard as in compliance with the statute, and that it was sufficient to comply with the statute.*"

In the case of *Gage* v. *Bailey*, 102 Ill. 11, the Supreme Court of Illinois passed upon the same question at page 19 of the opinion in the following words: "Elaborate arguments have been made upon the point no sufficient notice was given, either by the purchaser of the lots at the tax sale, or his assignee, as required by law, before a deed could be rightfully made to the assignee. The precise question raised and discussed in this case was considered by this court in *Garrick* v. *Chamberlain*, 97 Ill. 620, and there is, therefore, now no necessity for discussing it again as a new question. It was proven in this case. as it was in *Garrick* v. *Chamberlain*, the assignee of the purchaser caused a notice to be served on the party in possession of the premises, more than three months before the time of redemption expired, that the lots were not assessed in the name of any person, and that the party so served with notice was the only person in the actual occupancy of the premises. *That was regarded as a compliance with the statute, and that it was sufficient to comply with the statute to entitle the purchaser to take a deed.* Some criticism is made on the affidavit of service of notice, that it does not set forth with sufficient certainty the party served with notice was in possession of the property at the date of the service. The fact might perhaps have been more clearly stated but it is apparent from the reading of the affidavit, the notice was served on the party in the actual occupancy of the premises on the 3d day of September, 1874, which was more than three months before the expiration of the time of redemption. The reading of the affidavit makes no other impression on the mind. It is wholly immaterial whether the party went upon the premises to make service of the

notice. It was sufficient if he did in fact serve the notice on the only person in the actual possession of the premises in apt time, and that the property taxed had been assessed in no name. *That brings the case precisely within the rule in Garrick* v. *Chamberlain, and that case is conclusive on this point in the case in hand.*"

It may be well here to refer to the affidavit in that case and in the case at bar. In the statement of the case of *Gage* v. *Bailey*, at p. 12, appears the affidavit upon which the deed was issued; the controlling feature is: the affiant says, that he, as the agent of Asahel Gage, "on the 3d day of September, 1874, served a notice, of which the annexed notice is a true copy, on P. N. Duval, by handing the same to and leaving the same with him, said P. N. Duval, in said county. Deponent is acquainted with the premises mentioned in said notice, and the person so served was the only person in possession thereof three months before the time of redemption from the sale mentioned in said notice expired, to wit, on the 3d day of September, 1874, and for more than thirty days previous and subsequent thereto, and said premises were not taxed in the name of any person." The controlling feature of the affidavit in this case is, that the affiant, as the agent of Asahel Gage, "on the 21st day of June, A. D. 1876, served a notice, of which the annexed is a true copy, on Thomas Armstrong, by handing the same to and leaving the same with him, said Thomas Armstrong, at Chicago, in said county. Deponent is acquainted with the premises mentioned in said notice, and the person so served was the only person in possession thereof three months before the time of redemption from the sale men-

tioned in said notice expired, to wit, on the 21st day of June, A. D. 1876, and for more than thirty days previous and subsequent thereto, and said premises were not taxed in the name of any person."

It will be observed the language of the two affidavits is *precisely* the same.

In the case of *Frew* v. *Taylor*, 106 Ill. 159, the Supreme Court commenting upon the same provision, at page 165 of the opinion, says: "The constitutional mandate is, simply: 'And the General Assembly shall provide, by law, for reasonable notice to be given to the owners or parties interested, by publication or otherwise, of the fact of the sale of the property for such taxes or assessments, and when the time of redemption shall expire.' (Const. 1870, Art. 9, Sec. 5.) And it will thus be observed that as to the kind of notice to be given the General Assembly is unrestricted. It may enact that it shall be by publication, and if by publication, in what form, or that it shall be otherwise, and prescribe how. *The only imperative requirement is, that occupants shall be served with personal notice.* The General Assembly, in obedience to this mandate, enacted * * * * (Sec. 216. Ch. 120, Rev. Stat. of 1874.) It thus appears that it was not necessary, under the facts here shown, to make an effort to find the owner of the land. * * * * *"*

It is unnecessary, therefore, to further discuss this question, as the law is well settled in the State of Illinois that it is not necessary, under the constitution and the statutes as they existed at the time this service was made, for the purchaser at a tax sale to serve a notice of the sale upon any other owner of the land than such as appeared to be the owner,

either by having the property taxed in his name, or by his possession thereof. The two first cases cited are precisely the same in all regards as the case at bar. The last case cited was one in which the service of notice was made by advertisement, as the land was not taxed in the name of any person, and no one was in possession thereof.

To return now to the record in relation to the possession of this property, the only evidence introduced by the appellee in the court below to show the possession of the property is, Exhibit "L" (pg. 62, printed record) which is a lease from Pumpelly to Elder, dated June, 1880; the testimony of Walter Mattocks and Mary and Frank Gilespie or *Glasby*, found at p. 26 and 31 of the printed record.

Walter Mattocks, by his testimony, claims to have taken possession of the property from Mrs. Gilespie and Mrs. Gilespie and her son placed the date that they took possession of the property at three years before last September or August; this deposition was taken in November, 1880; three years before the August or September previous would fix the date that the Gilespies took possession in August or September of 1877. U. George Taylor stated by his affidavit that he found the premises in the possession of Thomas Armstrong in June, 1876, or a year and two months before Mrs. Gilespie took possession. Then upon the question of fact in this regard it is demonstrated the notice was served upon the proper person.

II.

IT DOES NOT APPEAR THAT ANY OF THE $3,700 FOR EXCESSIVE COMPENSATION TO THE COUNTY COMMISSIONERS WAS EXTENDED AS A TAX.

The only other defect alleged by the bill against appellants' source of title, evidenced by the tax deed, dated September 6, 1877, is that among the items of tax extended against the premises for 1873, and for which judgment was entered against the premises, was the sum of $14,000 for the per diem and mileage of the county commissioners, reckoned at $5 per day for each commissioner, when by law the compensation was fixed at $2.50 per day, and that the excess of the legal levy was $3,700. (R. p. 3.)

The evidence upon this question is extremely meagre and unsatisfactory, it consisting only of Exhibits B and C (R. p. 42), and certain voluntary certificates (R. p. 57). There is in the exhibit an estimate of old indebtedness, and among the items appears the per diem and mileage of board of commissioners $14,000; to this is attached the certificate of the clerk of the County Court that it is a true and correct copy of a *portion* of the proceedings of the board of county commissioners. There is no evidence in the record that this entered into the levy of the taxes for county purposes, neither is there any evidence in the record that it was extended against the property.

It would be highly improper to hold this title void because the county commissioners had charged a per diem as a tax upon the community in excess of what they could legally charge, until it was shown that this per diem entered into the taxes for which the property was sold. Section 121 of Ch. 120 of the

Rev. Stat. of Ill. provided: "The county board of the respective counties shall, annually, at the September session, determine the amount of all taxes to be raised for county purposes. * * * When for several purposes, the amount for each purpose shall be stated separately." Section 123 makes it the duty of the county clerk to prepare for the use of the collectors, a book containing the list of property assessed and the following sections define how he shall extend the taxes upon such book, and section 128 provides: "All State and county taxes shall be extended by the respective county clerks upon the property in their counties." * * * It will thus be seen, in order to obtain the benefit claimed by the bill for the extension of the alleged per diem tax upon the tax warrant, it was necessary for the complainant to show a levy by the county board at its September session for such purpose, and also to show such levy extended by the county clerk upon the tax warrant, neither of which has been done in this case. It does not appear on what date the proceedings were had, upon which the alleged per diem was voted. It is true there seems to be a resolution upon October 27, 1873, but that resolution refers to something preceding it. Following the resolution there is a schedule of items in which the per diem item is mentioned, but the document is only a partial document, as appears from the certificate of the clerk, and there is nothing to show that any of these items were, in fact, extended by the county clerk as taxes upon this property, excepting the voluntary certificate above referred to.

This voluntary certificate by the County Clerk says that the sum of $1,221,716 was levied by the board of county commissioners, and that the same

was extended on the tax warrants for the year 1873, "*all of which appears from the records and files of my office.*"

Clearly it is incompetent to prove the contents of an official document by a naked certificate of the custodian thereof, stating his opinion of the purport of the document.

But as the same questions arise upon the other source of title the argument may be there considered.

Again, the item claimed to be irregular is "Per diem and mileage board commissioners 14,000" (p. 54); the items of which this is composed do not appear, but certain *portions of the proceedings* of the board of county commissioners were offered in evidence (pp. 42, 43, 44 and 46), purporting to show the amount voted to the commissioners for per diem and mileage. These several sums aggregate $15,121.30, or an excess of $1,121.30 over the amount claimed to have been appropriated. Had the whole of the proceedings of the board been produced, can it be presumed the remainder of the alleged excess of $3,700 would not have been accounted for?

In any event there is in this a variance between the allegation and the proof.

III.

IT DOES NOT APPEAR THAT ANY OF THE ITEMS OF THE CITY TAXES OF 1875, CHARGED BY THE BILL TO BE IN EXCESS OF THE CONSTITUTIONAL LIMITS, WERE EXTENDED WITH THE TAXES AGAINST THIS PROPERTY, AND FOR WHICH THE PROPERTY WAS SOLD AND THE DEED ISSUED TO APPELLANT FEBRUARY, 4, 1880.

Reference has been made to the mode of extending the county taxes of 1873; the city taxes of 1875

were extended under the same law, and while the record and files of the county clerk's office are public records, instead of presenting them or exemplified copies, naked certificates of the county clerk are presented in their place.

At page 52 of the record the county clerk makes a voluntary statement that the records of his office show the valuation of the property of Chicago to have been $174,556,474, in 1875; by a similar statement of what he considers a fair deduction from his records, the county clerk states in another marked certificate (p. 56) that the items of the city tax complained of were extended on the *collector's warrant for 1875*, and again by still another certificate on page 61. These voluntary certificates of the county clerk are not evidence.

1 Greenleaf, Ev. § 498.

By statute, certificates of various officers may be used as evidence, but only in such manner and to the extent prescribed by the statute. The statutes of Illinois, so far as relates to this question are Sections 5 and 10, Chap. 35, and Sections 13 and 14, chap, 51, Rev. Stat. 1874.

By § 5, Chap. 35, the county clerk is made the keeper of the county seal, to be used where he is required to use an official seal; § 10, Art. 6, same chapter, defines the clerk's duties to be "to give any person requiring the same, and paying the lawful fees therefor, *a copy of any record, paper or account* in his office."

Sections 13 and 14 of chapter 51 provide that papers, entries and records of courts, and the papers, entries, records and ordinances of any city, village, town or county "may be proved by a *copy* thereof, certified under the hand of the clerk," etc.

Each of these certificates recites the matters they refer to appear upon the records of the clerk's office.

It is insisted they are not competent evidence, as the records should be produced that the court might pass upon the *facts* disclosed thereby.

But, for the purpose of the argument, suppose it be conceded, the records if produced would have disclosed the same facts the clerk assumed they do, this would merely show the alleged irregular items of city tax were extended upon the collector's warrant *for the year 1875*. These taxes were forfeited to the State at the annual tax sale in 1876 (Exhibit "3," Gage, p. 77), and there is no pretense by the evidence; the same items were again extended upon the collector's warrant *for the year 1876*. It must be borne in mind it was for the taxes remaining unpaid upon the warrant for 1876 at the annual tax sale in 1877 that appellant purchased.

Whether the alleged illegal items were stricken from the 1875 record by the court in 1876 or afterward by the proper authorities when the taxes were re-extended upon the warrant for 1876, or whether it was by the court upon either or both of those years ascertained the items were proper, or were not in fact extended, does not by this record appear. It does, however, sufficiently appear there is no competent evidence to show that any improper tax entered into the warrant for 1875, and absolutely no evidence, to indicate any improper tax entered into the warrant for 1876, and upon which appellant purchased in 1877.

IV.

THE JUDGMENTS OF THE COUNTY COURT OF COOK COUNTY UNDER WHICH APPELLANT PURCHASED, ARE *res adjudicata* AND CAN NOT BE COLLATERALLY ATTACKED.

The law of Illinois governing the collection of the revenue, and the sale of real estate for delinquent taxes, is quite different from the laws of many other States. Here it is provided by the constitution of 1870 of Illinois by Sec. 4 of Art. 9 that there shall be no sale of property for taxes or assessments but by some general officer of the county "upon an order or judgment of some court of record."

In most of the States the mode of selling property for delinquent taxes is upon an advertisement by the collector or by other proceedings without any judicial inquiry as to the propriety of such sale. These essential features in the law of Illinois should be borne in mind, all sales of real estate for the non-payment of taxes can be made only upon a judgment of some court of record. In obedience to the constitutional provision referred to, the General Assembly of Illinois have provided by Sec. 185 of Ch. 120 Rev. St. 1874, of Ill., * * * "That all applications for judgments and order of sale for delinquent taxes shall be made to the County Court." And Sec. 191 of the same Ch. provides the proceedings for and form of the judgment. To return to the constitution of 1870, Sec. 1, Art. 6, defines the judicial department of the government; and Sec. 18 of the same article provides for the election in each county of one judge and one clerk of the County Court, and that * * * "County Courts shall be courts of record, and shall have original jurisdiction in all matters of probate, * * * and in pro-

ceedings for the collection of taxes and assessments * * *."

It will thus be seen that the County Court is a court of record with general original jurisdiction in the matter of the sale of lands for delinquent taxes.

Graceland Cemetery Company v. *The People*, 92 Ill. 619.

Being a court of record with jurisdiction of the subject-matter and the *res* its judgment must be conclusive while it remains in operation.

Mayo v. *Ahloy*, 32 Cal. 479.
Porter v. *Purdy*, 29 N. Y. 106.
People v. *Brislin*, 80 Ill. 423.
C. N. W. R. R. v. *The People*, 83 Ill. 467.
Andrews v. *The People*, 84 Ill. 28.
Graceland Cemetery Co. v. *The People, supra.*
Chicago Theological Seminary v. *Gage*, 12 Federal Reporter, 398.

The action of the court in such matters is *in rem* against the property.

Ch. 120 Sec. 191 Rev. St. of Ill. 1874.
Pidgeon v. *The People*, 36 Ill. 249.
Chesnut v. *Marsh*, 12 Ill. 173.
Spellman v. *Curtenius*, 12 Ill. 409.
Olcott v. *The People*, 5 Gil. 481.
Brown v. *Joliet*, 22 Ill. 123.
The People v. *Nichols*, 92 Ill. 517.
St. John v. *City of E. St. Louis*, 50 Ill. 92.
Atkins v. *Hinman*, 2 Gil. 437.

That being the case, the judgment of the County Court is binding on all the world, for public convenience requires that it should be so.

Starkie on Ev., Sec. 320.
Wells, *Res Adjudicata*, p. 504.

The very principle upon which the judgment is admissible in evidence at all, is that the point has already been decided in a suit between parties or their privies, by some competent authority which renders further litigation useless and vexatious. Starkie on Ev., Sec. 350. And the binding force of judgments *in rem*, and their conclusiveness against all the world is recognized by all the text writers and by the Supreme Court of the United States.

Wells, *Res Adjudicata*, Sec. 556, p. 504.
Starkie on Ev., Sec. 380.
Crandson v. *Leonard*, 4 Cranch, 434.

And *in rem*, the proceedings are evidence against all, whether they are parties to the suit or not, because in such case all are supposed to be in a position to litigate the matter if they desire, and the judgment can not be impeached except on the ground of fraud or collusion.

Starkie on Ev., Sec. 372.

Upon this point it was held that a decree restoring a vessel which had been seized by revenue officers, is *conclusive* evidence in an action by the owners against the revenue officers, that the seizure was illegal, because there is *no distinction* as to the conclusiveness of sentence operating *in rem* between a condemnation and an acquittal; the rule of evidence is reciprocal.

Galston v. *Hoyt*, 13 John, 561; 3 Wheat. 246.
Graceland Cemetery Co. v. *The People*, 92 Ill. 619.

That the record of a court of general jurisdiction in a regular course of law, regarding a subject over which such court has jurisdiction, is conclusive, is the ancient and well settled rule of law, and it

can never be more appropriately enforced than when the suit, as in the present case, is a proceeding *in rem.*

McCahill v. *Insurance Co.*, 26 N. J. Equity, 531, and cases cited.

Monroe v. *Douglas*, 4 Sandf. N. Y., Ch. 134.

In *Crandson* v. *Leonard*, 4 Cranch, 433, it was held that the sentence of a foreign Court of Admiralty, condemning a vessel for breach of blockade, is *conclusive* evidence of that fact and evidence tending to disprove the act should have been excluded.

WASHINGTON, J., said: "If the injustice of the belligerent powers and their courts should render this rule oppressive to the citizens of neutral nations, I can only say with the judges who decided the case of *Hughes* v. *Cornelius*, let the government in its wisdom adopt the proper means to remedy the mischief. *I hold the rules of law, when once firmly established, to be beyond the control of those who are merely to pronounce what the law is*, and if from any circumstance it has become impolitic, in a national point of view, it is for the nation to annul or modify it. Till this is done, by the competent authority, I consider the rule to be inflexible."

See *Bradstreet* v. *Neptune Ins. Co.*, 3 Sumner, 600.

It being the universal principle of law that recitals of a judgment of a court having jurisdiction are conclusive, and that the judgment can not be collaterally assailed, it is proper here to see how far this rule is carried in Illinois. It is held in this State, that a record of a court imports verity and must be tried by itself.

Young v. *Thompson*, 14 Ill. 380.

In *Hobson* v. *Ewan*, 62 Ill. 146, it was held, that the jurisdiction being established, no matter how erroneous the finding of the court may be, the finding is not void, and *can not be questioned* in a collateral proceeding. This is the universal rule in all courts of common law. (See cases cited.)

If the court has jurisdiction over the person and subject-matter, then, upon principles of universal law, acts performed and rights acquired by the third persons under the authority of the judgment or decree, and while it remains in force, must be sustained, notwithstanding a subsequent reversal. *The necessity of this rule as founded upon important considerations of public policy, is too apparent to admit of dispute, when the validity of acts done under a judicial proceeding is collaterally called in question, we have to look only to the jurisdiction*, and if that exists it matters not how erroneous the proceedings of the court may have been, the rights of third parties acquired under such proceedings and by virtue of them must be protected.

Hobson v. *Ewan, supra.*
Goudy v. *Hall*, 36 Ill. 313.
Young v. *Lorain*, 11 Ill. 624.

In *Conover* v. *Mesgrave*, 68 Ill. 58, the error complained of was *dehors* the record, and could only be shown by evidence outside of and contrary to the record, *held*, the judgment could not be collaterally assailed. Public policy requires stability in all judicial sales; they should not be disturbed for slight cause. To do so would impair that confidence so essentially necessary to induce persons to become purchasers when real estate is offered for sale under a judgment or decree of a court.

In *Osgood* v. *Blackmore*, 59 Ill. 261, the court say: It is true that if, by an inspection of the *whole record*, the court is sure that there could not have been jurisdiction of the person, then the *prima facie* case would be overcome. But where the court has *adjudicated* that there was jurisdiction of the person, *we can not look beyond the record* or receive evidence outside of it to disprove the findings. In this respect the question can alone be tried *by the record.*

In *Prescott* v. *Chicago*, 60 Ill. 121, the defect in the proceedings being in the certificate of publication, the court say: We are disinclined to recognize the propriety of allowing these *former proceedings to be attacked in such collateral way.*

The court say in the case of *Feaster* v. *Fleming*, 56 Ill. 457: *It is an unbending rule of law*, that if the court had jurisdiction of the parties and subject-matter, *no error will render the judgment or decree void.* In this cause jurisdiction was acquired of the parties, and the subject-matter was one proper for adjudication. Some sanctity must be given to judicial proceedings, and some safeguard thrown around purchasers at judicial sales. The purchaser pays his money, enters into possession, accepts his deed and is protected by the decree, for he is not *bound to look beyond it.* (See cases cited.) *Flowing from the principles of the law and from strict justice, it is a fixed rule that all rights acquired under a decree while in force are secure, though there may be a subsequent reversal.* There must be reliance upon the judgments and decrees of the courts. Deprive purchasers, at judicial sales, of protection from them and our titles become mere shadows. (And see cases cited.)

Thompson v. *Morris*, 57 Ill. 333, was a bill in

equity to subject certain lands to the payment of a judgment. A decree *pro confesso* was entered against one of the defendants, and it is here claimed that the decree did not affect the title of that defendant, for it was such a title as could not be questioned in that suit. The court held, the defendant might have demurred or answered; one of these things he was bound to do, if he desired to protect his title; not doing either, the court had power to order the sale of the land, including his interest therein. When the *decree is collaterally assailed, it is sufficient to know the defendants were in court by service or appearance; that the decree was one the court could make, and the matter was brought before the court by the bill for adjudication.*

The court say in *Rogers* v. *Higgins*, 57 Ill. 244: "This principal of *res adjudicata*, embraces not only what actually *was determined* in the former case, but also extends to *any other matter properly involved*, and which might have been raised and determined in it."

See cases cited; also, *Kelly* v. *Donlin*, 70 Ill. 378.

And on this point it was said in *Chiniquy* v. *People*, 78 Ill. 570, "It is also urged (as an objection to the tax) that seven thirty-sixths of the State and school tax for the year 1873, is unconstitutional and void, as was held in *Rumsey* v. *Hæger*, 76 Ill. 432. There is nothing so far as we can see in this record which shows that fact. If such is the case, the objection should have been made in the court below, and shown to exist. But it was not raised so far as we can see, in the County or Circuit Court, and the objection comes too late, when raised for the first time in this court."

See also *Karnes* v. *People*, 73 Ill. 274.

The records of a court import absolute verity, and no evidence will be received to show the *want of jurisdiction*, if the records affirmatively assert jurisdiction.

Zepp v. *Hager*, 70 Ill. 223, and cases cited.
People v. *Gray*, 72 Ill. 343.

The rule is, if the court had jurisdiction of parties and the subject-matter, no error will render the judgment void.

Mulford v. *Stalzenback*, 46 Ill. 303, and cases cited.

And its action can not be drawn in question in any collateral proceedings.

Mulford v. *Stalzenback, supra*, and cases cited.

And the order of the court not being void, the purchaser under it can not be disturbed in the title he has thus acquired.

Mulford v. *Stalzenback, supra*, and cases cited.

It is the rule in this State that the purchaser at a judicial sale is not bound to look beyond the judgment or decree when executed by a conveyance, nor go further back than the order of the court, *when the facts necessary to give the court jurisdiction appear on the face of the records.*

Mulford v. *Stalzenback, supra*, and cases cited.

The valuation of property by the assessor for taxation is conclusive, and the courts have not jurisdiction to review or alter the same, however grossly the assessor may err; and a tax based upon the assessment is like a judicial sentence, and can be assailed only for fraud or want of jurisdiction.

Spencer v. *The People*, 68 Ill. 510, and cases cited.
Republic Life Ins. Co. v. *Pollak*, 75 Ill. 292.
The People v. *Big Muddy Iron Co.*, 89 Ill. 116, and cases cited.

In the case of *Spellman* v. *Curtenius*, 12 Ill. 409 objection was made that the amount of costs was not correctly stated in the judgment. But the court said: "This is immaterial, as it does not go to the *jurisdiction of the court to enter a judgment.* It might be cause for reversing it on a direct proceeding by appeal or writ of error, but can not be made a question when the judgment comes collaterally in issue."

In the case of *The People* v. *Smith*, 94 Ill. 226, the court said in conclusion of that opinion: "This view can do no harm to the land owner if the judgments rendered in 1877 and 1878, under which the land was forfeited to the State, were erroneous; he had *a complete remedy* by appeal or writ of error, but as he did not see proper to avail of this remedy, he can not now complain. *"

The objections of the land owner in this case were to the irregularities in proceedings for the collection of the taxes, prior to the rendition of judgments in 1877 and 1878, by the County Court, against the property for delinquent taxes, and the court below sustained the objections, which judgment of the court was reversed upon appeal.

The case of *Graceland Cemetery Co.* v. *People*, *supra*, by the clear, strong language used in the opinion, would seem to dispose of all objection to the doctrine of estoppel raised by appellees. The portion of the opinion referred to is as follows:

"It would appear, on general principles, that there could hardly be two views on this question. For really it seems to resolve itself into the simple inquiry, whether the determination of the County Court, upon an application for a judgment against lands for taxes, is a judgment at all or not. That such a determination, when adverse to the party resisting the application, is characterized as a judgment by the legislature, the courts, law writers and the profession generally, is without question, and that the term thus applied is used in its ordinary and technical meaning does not seem to us to admit of a doubt. This being so, it must necessarily follow that the determination of the court, when favorable to the objector, is equally a judgment; for it were absurd to hold the decision of the court a judgment if adverse to the objector, and not a judgment if in his favor. If such a determination is binding at all, it must be conclusive on the parties thereto until it is reversed or set aside by some legal proceeding instituted for that purpose. If not binding at all, why did the legislature provide for an appeal in such cases? Why incur the expense and go through the idle and useless ceremony of appealing a case of this kind, if the adjudication is binding upon no one?"

At the time then of the rendition of the opinion by the Supreme Court of Illinois, in the *Graceland Cemetery* case, that is to say in 1879, there was no question as to the effect to be given a judgment of the County Court for taxes, and that such judgment stood upon precisely the same foundation as any other judgment *in rem*, or any judgment in *personam*.

There is now a disposition to draw a distinction

between a judgment rendered in a case where the owner of the land objected to the entry of the judgment, and a case where the judgment for the taxes was entered by default, and the authority for this distinction is traced to the opinion in the *Graceland Cemetery* case, *supra*.

Ordinarily this court would receive no discussion upon such a question, for all text works upon the law and all decisions of the courts are uniform in placing such adjudications upon the same principle, and in declaring them *res adjudicata*.

Why, then, this discussion? Is it because the judgment in question is rendered against certain property to collect the portions of the public burthen which that property should pay?

The elementary works upon the law do not recognize this as either sound reasoning or good logic. To adopt such a mode of decision would render all *principles* of law inoperative, all suitors uncertain of the application of the law, and decisions conflicting, and necessarily of no effect as precedents; neither can it be done unless it be held the Supreme Court of Illinois have announced a different doctrine for tax cases *in the future*, and established two principles of law for the same subject-matter.

The principles appellee contends the Supreme Court of Illinois intend to announce, may be briefly stated as follows:

1. In all cases where the court possesses jurisdiction, and has before it the parties and subject-matter, its adjudication shall be binding upon parties and privies; *excepting* in cases where the people obtain judgment for the sale of land for delinquent taxes, and the owner of such land does not appear and object to the rendition of such judgment.

2. In all cases where the court possessing jurisdiction, and having before it the parties and the *res*, its adjudication shall have absolutely no binding effect upon parties or privies thereto, when the proceeding is to collect the public revenue and the owner of the *res* neglects to object to the collection of the tax.

This clearly states the position of the appellee, but mis-states the Supreme Court.

The authorities relied upon to maintain this legal monstrosity are:

Graceland Cemetery Co. v. *People*, 92 Ill. 619.
Belleville Nail Co. v. *People*, 98 Ill. 399.
Gage v. *Bailey*, 102 Ill. 11.

To those cases the court will be directed, and it is believed convinced, no such principle is advanced.

Before passing to a consideration of those cases, let appellee's proposed rules of law be examined and considered; they are:

Only where objection to judgment is made, is a judgment for the sale of property for delinquent taxes, conclusive.

Where the judgment is by default of the owner of the land, it has no effect as an estoppel.

It must be borne in mind, the proceeding wherein the judgment is rendered is *in rem*, not *in personam*, and it is now proposed to establish by this peculiar principle, in actions *in rem*, the court must have the owner before it in order to render a valid judgment.

This may be exemplified. A makes and secretes fifty barrels of whisky. The officers of the government find this illicit product, and the proper court acquires jurisdiction of the subject-matter in the

mode prescribed by law, brings the *res* within its custody, and enters its judgment against the whisky. After the whisky has been sold to B under this judgment, A asserts an *irregularity* in some of the proceedings anterior to the judgment, and asks that the liquor be returned to him.

This collateral attack, it is claimed, should be permitted, because A did not appear before the court and contest the authority of the United States to obtain the judgment against the whisky for nonpayment of the tax, etc.

The only distinction between the supposed case and the one at bar, is one of fact, in *that* the United States is endeavoring to collect its tax—in *this*, the State of *Illinois* is proceeding to enforce payment of taxes due.

The principle of law is the same, and never has the principle received such a sanction.

It is the possession of the *res* in manner provided by law, that gives jurisdiction to the court to enter judgment. The owners of the whisky are in no manner necessary parties.

Again, the proposition is, the owner of land must appear in order to give the court jurisdiction to render a judgment, that can in any way affect his rights. The proposition in itself is ridiculous. The great State of Illinois dependent upon the action of the land owner for its power to enforce payment of taxes assessed against the land. For, if the judgment has no binding force, its satisfaction can not be made by execution; and if the owner remains inactive, it can never obtain a binding force (?).

He must appear in court and file his *objections* to the rendition of judgment for the collection of the tax. He must *resist* the State in its endeavor to

collect, in order to put the State in position to collect.

It is not sufficient that he stand by and refuse to pay the taxes for four consecutive years, but he must announce himself in actual open hostility to the State. Anything short of this actual hostility to the State, in open court, by an endeavor to prevent the State from collecting its tax, leaves the State powerless to obtain a valid binding judgment for the collection of its revenue (?).

He it is who has the privilege to pay if he desires, power to prevent collection if he will. The State can not compel him to appear in court, and if he elect to stay away *it* is without power to proceed against the *res*.

To return to the Graceland Cemetery case, *supra*, and those decided upon its authority, it will be proper to take them up in the inverse order of their rendition.

In the case of *Gage* v. *Bailey, supra*, the court used these words: "The court has decided in *Belleville* "*Nail Co.* v. *The People*, 98 Ill. 399, that a judgment "in the County Court for taxes is not conclusive, up- "on the owner, of the liability of the land for the "taxes assessed on it. It is otherwise where the "owner appears and contests the application for "judgment. In such case he will be concluded by "the judgment of the court, as in any other case in "which the matters in controversy have been once "litigated. The owner in this case did not appear "to contest the application for tax assessed against "the lands in controversy, and hence the objections "taken to the regularity of the proceedings both "before and after the judgment, are open for con- "sideration."

This is all that is said in that case upon the authority of the court to consider a collateral attack, and the reason announced for such a ruling is a decision to the same effect in the case of *Belleville Nail Co.* v. *The People.*

It may be proper to state, the decision of the court was in all respects in favor of the tax, and no opportunity was presented to call the attention of the court, by a petition for a re-hearing, to the points here discussed.

By reference to *Belleville Nail Co.* v. *The People*, on page 403, will be found the portion of the opinion under consideration, and that the opinion was based upon the case of *Graceland Cemetery* v. *The People, supra.*

Having traced the Bailey case back to the Belleville Nail Co. case, and that, in turn, back to the Graceland Cemetery case, it remains only to look at that case and ascertain what was said upon the subject; to review the points in issue to see what, *if anything*, the court did in fact say upon this question.

In *Graceland Cemetery* v. *The People*, 92 Ill. 619, the court announced the rule as here contended for by appellant, and clearly demonstrated by the argument of the opinion, they regarded the principle the same, whether applied to tax proceedings or any ordinary action *in personam.*

In one portion of the opinion, page 622, the court used this language: "Sec. 276, Ch. 120, of the Rev. "Stat. of 1874, affords no authority for ignoring the "judgments in question. While they remain unre- "versed and in full force, that section can have no "application to or effect upon the rights of the par- "ties to this suit.

"Of course the rule here laid down is applicable

" only to a case where there has been a trial on the " merits, the court having jurisdiction of the person " and subject-matter of the suit, and does not apply " where there has not been a trial on the merits, or " where there is want of jurisdiction."

Here then is the rule for which appellee contends, and to which *section 276 of the Revenue Law has no application.* The section to which reference is made, reads as follows:

" If any real or personal property shall be omitted " in the assessment of any year or number of years, " *or the tax thereon, for which such property was liable,* " *from any cause has not been paid,* or if any such prop- " erty, by reason of defective description or assess- " ment thereof, shall fail to pay taxes for any year " or years, in either case the same, when discovered, " shall be listed and assessed by the assessor, and " placed on the assessment and tax books." * * *

To show how this section of the statute could affect the consideration of a question of estoppel, requires a careful perusal of the whole opinion.

It will be seen upon reference to the opinion, the case was one where the Cemetery had successfully interposed its objections to the rendition of judgment against its land for taxes of the several years 1871 to 1874, inclusive, and formal judgments were entered by the court in favor of the objector and against the People. In 1878 the assessor, *under the provisions of section 276, supra,* proceeded to list and assess the property for the same taxes of 1871 to 1874, inclusive, and placed the same on the assessment and tax books.

At the application for judgment in 1879 the Cemetery company again appeared and interposed the objection that the former judgments were con-

clusive, and the State had no authority to disregard them so long as they remained in force.

To this position the State, while admitting the doctrine of estoppel as it existed at the common law, insisted that by the *provisions of section 276, supra, the rule was changed in favor of the people in their sovereign capacity of collecting a revenue*, and it was made his duty in such case for the assessor to proceed to *re-assess the property.*

This was the issue before the court, and after a careful review of the whole subject the court held section 276 afforded no authority for ignoring the judgments.

But it was necessary to define the *meaning of that section* and the duties of the officers thereunder, that the scope of the opinion might not be misconstrued. It was therefore further held *the section did not apply to cases where there had been a contest and the objector was successful*, but only, TO CASES WHERE THROUGH SOME ERRONEOUS PROCEEDING OF AN OFFICER, THE PROPERTY WAS OMITTED IN THE ASSESSMENT OF ANY YEAR OR YEARS. That is, where there had *not been a trial on the merits.*

It is submitted this is the only construction the case is susceptible of receiving, when carefully considered in connection with the revenue law upon which the proceeding is based, for the right to tax the property at all, is derived from the section in question.

It is an unfortunate occurrence that the Supreme Court of Illinois failed to comprehend its own opinion in subsequent cases, but when it is considered that eminent counsel referred to the case and commented only upon this language: "Of course the "rule here laid down is applicable only to a case

"where there has been a trial on the merits," without pointing out the logic of the words, it is not so strange the court was misguided by the decision.

It is, however, very commendable in the Supreme Court that it ceased to follow the error into which it was led, upon its attention being called to that error in subsequent cases.

Had it been the intention of our Supreme Court to follow the error announced in the Belleville Nail Co. and Bailey cases, *supra*, it would have so announced in the case of *Gage* v. *Busse*, but in that case they refused to make such an announcement, but disregarded the question *that another error of grave magnitude could be corrected*.

Gage v. *Busse*, 102 Ill. 592.

The Supreme Court did not stop here, but in a case wherein the opinion was filed upon the same day, held, a party is estopped from collaterally assailing a judgment of confirmation, when he had neglected to make a defense thereto.

Gage v. *Parker*, 103 Ill. 528.

In the Parker case the court said: "The 19th section of article 9 of the act in relation to cities, villages and towns, under which the town of Hyde Park passed the ordinance, declares: 'Whenever such local improvements are to be made wholly or in part by special assessment, the Council, in cities, or Board of Trustees, in villages, shall pass an ordinance to that effect, specifying therein the nature, character, locality and description of such improvement.' It is contended that this ordinance did not comply with the requirements of the section of the statute, *supra*, and hence the assessment was illegal, under the

"ruling of this court in *Loss* v. *Chicago*, 56 Ill. 354, "and other like cases. We shall not, however, "stop to pass upon the validity of the ordinance, as complainant is not in a position to question its validity. It appears that the assessment "was made under the ordinance, and a return made "to the County Court of Cook County, where, on the "24th day of November, 1873, after due notice, it "was confirmed, except as to the land of certain "persons who appeared and filed objections, *complainant not being one of them.* Is complainant concluded by the judgment of confirmation? In *People* "v. *Breslin*, 80 Ill. 423, where it was contended that "the assessment was illegal, because not on contiguous property, it was said: 'This question, and all "others bringing up the levy and assessment, have "been passed upon by the Circuit Court, and are *res adjudicata*, and can not now be made in this court. "Upon these there is a judgment passed by a court "of competent jurisdiction, and there they must "rest.' This case has been followed by a number of "other decisions, where the same doctrine has been "announced: *Lehmer* v. *The People*, 80 Ill. 601; "*Prout* v. *The People*, 83 Id. 154; *Chi. & N. W. R. R. Co.* v. *People*, Id. 467; *Andrews* v. *The People*, Id. 529.

"If the assessment was illegal from the fact that "it was based upon an insufficient ordinance, it was "the duty of the complainant in the bill to appear "before the County Court where the application was "made to confirm the assessment, and there make "the objection; *but as he failed to do so, this judgment "of the County Court, when called in question collaterally, must be regarded as conclusive.*"

This would seem to dispose of the whole question, and although the court was misled in two cases by

an erroneous construction of a third, as soon as the matter was presented in its true light in the cases of *Gage* v. *Busse and Gage* v. *Parker*, *supra*, the court took steps immediately to correct the error of decision above referred to.

Very shortly after the determination of the case at bar in the Circuit Court, the learned judge before whom it was tried had occasion to again pass upon the same questions here presented under this head, and after a more careful and elaborate argument by counsel, he reviewed to some extent the questions here presented, and arrived at the conclusion now pressed. The opinion of the judge was subsequently published, and by reference to that additional light will be thrown upon the questions under discussion.

Chicago Theological Seminary v. *Gage*, 12 Federal Reporter, 398.

V.

It does not appear by this record whether objection was made to the rendition of the judgments for the sale of the land for taxes.

It having now been shown that in any view of the law, the judgments of the County Court could not be attacked, collaterally, in the manner the same is sought to be done, if the parties appeared before the County Court and made an objection to the rendition of judgment; it must, therefore, in order to sustain the decree of the court below, appear from this record that there was no such appearance, and that the judgment was, in fact, rendered by default; for if the parties would not be here permitted to collaterally assail the validity of the judgment, if they had once made a defense in the proceedings

where it was entered, this court can not indulge in a presumption, no defense was made in the County Court, merely for the purpose of nullifying the solemn findings and adjudications of a court of record.

It is not claimed by the bill of complaint that the judgment was entered by default, and this would seem an essential reason why evidence could not be received upon such question.

But there is not, in fact, any testimony or evidence showing or tending to show, whether there was any defense upon the merits of the case before the County Court when judgment for the delinquent taxes was sought.

There is in this record, certified copies from the County Court, of the judgment and precept upon which each of appellant's source of title is based, but these do not show or purport to show whether the judgments were entered by default or upon contest.

The object of these records was merely to show a valid judgment and precept to sustain the validity of each tax deed, there being no more need of producing the pleadings in the case than there would be to produce the pleadings of a case *in personam*, where a title was sought to be sustained under a sheriff's or marshal's deed under sale upon execution issued upon a judgment in such case *in personam*.

The records here show, in each case, certain objections were filed to the rendition of judgment for the delinquent taxes; this appears from the recitals in the judgment itself without specifying for whom, or by whom, such objections were filed.

It not appearing that the judgments in this case were entered by default, or that they were not en-

tered upon a contest upon the merits, there can not be (under any construction that may be given the decisions of the Supreme Court of Illinois) any right to grant relief in this case upon a collateral attack of the judgment of the County Court.

In submitting this case it is advisable to call attention to the extreme insignificance of the objections urged to the tax. In either of which objections, if fully sustained, the error is so slight as to amount to but a trifling sum. Three per cent. of only a small portion of $9.75 is all the error alleged to exist in the first tax, and only nine per cent. is claimed to exist in an item of $58.10 of the city tax of 1875. These items alone are attacked, and constitutes all the error claimed to exist in appellant's titles.

Because of the errors aforesaid the decree is erroneous, and the cause should be reversed.

Respectfully submitted,

AUGUSTUS N. GAGE,

of Counsel for Appellant.

ALBERT G. RIDDLE, *of Counsel.*

115-454

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CLERK.

Supreme Court of the United States

OCTOBER TERM, 1885.

NO. 42.

ASAHEL GAGE, Appellant,
vs.
MARIA B. PUMPELLY AND ADELINE P. KIDD, EXECUTRICES AND HEIRS AT LAW, EDWARD WADE, EXECUTOR, AND DELPHINE M. P. READ, HEIR AT LAW OF HARMON PUMPELLY, DECEASED.

APPEAL FORM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

REPLY FOR APPELLANT.

AUGUSTUS N. GAGE,
Counsel for Appellant.

ALBERT G. RIDDLE,
Of Counsel.

CHICAGO:
PRINTED BY THE CHICAGO LEGAL NEWS COMPANY 175 MONROE STREET.
1885.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1885.

No. 42.

ASAHEL GAGE

vs.

MARIA B. PUMPELLY ET AL.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

Reply of Appellant to the Argument of Counsel for Appellees.

MAY IT PLEASE THE COURT:

Upon careful consideration of the brief for appellees, counsel believes the court may be assisted by a concise reply.

Appellees' first position is an effort to sustain a cross-error based upon the amount of money decreed to be paid appellant by appellees as the equitable condition precedent to obtaining any relief.

While it is by no means admitted the grounds of the cross-error could be tenable though the premise were true, yet this will not be here argued because there is no foundation for the assignment of such a cross-error.

This is too delicate a question for criticism and the record alone must therefore suffice. Upon page 103 of the printed transcript and in the certificate of evidence is the following recital and stipulation.

"And further to maintain the issues upon his part the *complainant* introduced in evidence a stipulation entered into by the respective parties in relation to the amount of money paid by the defendant at the tax sales, and for other taxes; which said stipulation is in words and figures as follows, to wit:"

Here follows the stipulation contained in the certificate of evidence (page 104 of the printed record). "It is hereby stipulated and agreed by the respective parties hereto, in order to save the delay and expense consequent upon a reference to a master in chancery, to strike an account, that the following schedule represents the amount of money the defendant, Asahel Gage has paid out at the various tax sales for the purchase of the property mentioned in the bill, as well as taxes which he has paid thereon, together with double the amount of the sale, and with interest thereon at six per centum from the date of two years from the date of sale, and also interest at six per centum upon all taxes paid by said defendant from the date of payment."

The schedule shows the character of taxes bought or paid, for what year they were due, the date they were paid or sold, the amount of such payments, the penalties provided by law, and the interest upon each, the grand total of which is $1,118. This stipulation is signed Mason Brothers, solicitors for complainant, Augustus N. Gage, solicitor for defendant, and is indorsed filed May 9, 1882, W. H. Bradley, clerk.

By turning to page 21 of the printed record it will be seen the decree in this cause was entered May 9, 1882, the same day the stipulation was filed in the clerk's office. That decree provides for the payment by the complainant to the defendant of the amount found in the stipulation, that is, the sum of $1,118.

Thus it will be seen from this record that in the court below counsel for the appellees solicited from appellant a stipulation to take the place of evidence, and to save them the expense that would be necessarily incurred by a reference of the cause to a master to state an account, and that such solicited stipulation was used by them for that purpose.

To avoid delay, and the expense consequent upon a reference to the master, appellees solicited of, and received from appellant a stipulation of the amount of money to be decreed, and upon the same day appellees had their decree entered, finding the amount to be paid in accordance with this solicited stipulation.

These facts do not support the assignment of cross-error.

* * * * * *

The argument of the I and II points of the brief in chief is deemed sufficient upon what is said in the brief for appellees in reference to the validity of the first tax deed, but in his brief, counsel for appellees says (see page 18): "The second tax deed is also invalid by failure to give notice required by law," and then proceeds with a discussion of this alleged defect. It is shown the notice was served upon persons by the name of *Gilespie*, and that the affidavit of the persons making such service, and showing such fact, was duly delivered to the county

clerk as required by the statute in such case provided. Counsel now says that occupants were not served because the persons in possession was a family of the name of *Glasby*, and refers to the depositions of the *Gilespies* or *Glasbies*, to sustain this position.

The *reasoning* of counsel is faulty, for:

1. There is no pretense the occupants were not served, and it is not claimed these *Gilespies*, or *Glasbies*, did not in fact receive notice precisely as stated in the affidavits. (See pg. 92, printed record.)

2. *Gilespie* and *Glasby* are in fact *idem sonans;* this not only appears from the reading of the argument, but more readily by reference to page 30 of the printed transcript where there depositions appear.

The *argument* of counsel is false, because there is no *such* issue before the court, nor is there such an issue presented by the pleadings, neither was such a question discussed in the court below.

The question thus presented for the first time in this court, as has been stated, is not tenable. The purchaser at the tax sale in 1877 served the notice required by law on the occupant of the property in 1879, who was Mr. and Mrs. *Gilespie* (see evidence, p. 92 of the printed transcript). In the brief of appellees (p. 19) this party is referred to by the name of *Glasby*, and considerable stress is laid upon the difference in the two names. There is no attempt in the record to show that they were not the same persons who were served with the notice. It was never supposed in the court below that the testimony of the *Gilespies* or *Glasbies* was thus surreptitiously introduced as the foundation of an argument in this court, that they were different persons from

those who were served with the notice, or that it had any reference to the service of notice at all. They were not asked whether a notice had been served upon them, nor was any question propounded which would advise counsel it was the object of their testimony to contradict the evidence upon which the deed was based, that is, the affidavits showing the service of the occupant; notwithstanding all this, the evidence is now used as a basis for an argument that the occupant of the land was not served. The affidavits stated that the *Gilespies* were the only person in possession of the property. Appellees' evidence in the court below shows this to be true, but the parties give their name as *Glasby* instead of *Gilespie*, yet these persons were extremely illiterate as will be observed by reference to their depositions found upon pages 30 and 31 of the printed transcript. It is difficult from the reading of their depositions to draw any other conclusion than that they were very ignorant people; in fact it is quite difficult to form an idea of what they wish to say from the words used to convey their thoughts. The two names are so similar in sound that it may have been the party in serving the notice misspelled the name, or that the name was misspelled by the master, or by both; however this may be, there is no pretense the two names *Gilespie* and *Glasby* do not refer to the same person, and that they are not, in fact, one and the same person; *they are in fact idem sonans.*

At the time this evidence was given before the master, it was supposed it was offered for the purpose of sustaining the allegations of the amendment to the bill (printed record, p. 17), and counsel *then* supposed it was given for the purpose of showing

that appellees were in possession of the property, and were therefore entitled to maintain their bill of complaint. After the case came to this court and a more careful study of the record had been made, it was thought possible this evidence might be urged before this court for the purpose of sustaining another allegation of their bill, to-wit: that there was not a sufficient service of notice upon the occupant of the premises to sustain the deed issued to appellant in 1877, that is, *the first tax deed*. Therefore, in the brief in chief, the testimony of these parties has been considered in relation to the only allegation contained in the bill of a lack of sufficiency of notice to which by any possibility their testimony can apply, and it is there shown the service of notice was sufficient to authorize the clerk to issue that tax deed. But this discussion is unnecessary for the *argument* of the counsel is false, being without a premise in the pleadings, or the issues presented thereby.

It is an elementary proposition that a complainant can only have such relief as the allegations of the bill warrant, and that everything to be proved must be stated in the bill.

> Story Eq. Pl. §§ 28, 42, 241, *et seq.*, 257, 263, *et. seq.*
> 1 Daniel Ch. Pl. & Pr. 326.
> *Harrison* v. *Nixon*, 9 Peters, 483.
> *Gage* v. *Reid*, 104 Ill. 509.

This court said in *Harrison* v. *Nixon, supra,* at page 503 of the opinion:

"Every bill must contain in itself sufficient matter of fact *per se*, to maintain the case of the plaintiff, so that the same may be put in issue by the answer, and established by the proofs. The proofs

must be according to the allegations of the parties; and if the proofs go to matters not within the allegations, the court can not judicially act upon them as a ground for its decision: for the pleadings do not put them in contestation. The *allegata* and the *probata* must reciprocally meet and conform to each other * * *."

The only allegation in the bill upon which relief is sought against the second tax deed is, that a "portion of the taxes levied by the city of Chicago for the year 1875 was illegal, which illegal items were contained in the appropriation ordinance and the levy ordinance of the city of Chicago for the year 1875," and a specification of such portions of the tax claimed to be illegal (See bill, printed record, p. 4). The question whether the service of notice in this behalf was sufficient, was not presented by the pleadings and is not found in this record, it was not mooted in the court below. It can not be tried here.

It seems singular that these three questions should be urged by counsel in this case; *first*, an assignment of cross error upon matter of appellees' own creation, admission and stipulation; *second*, the discussion of evidence applicable only to other matters, questions wholly foreign to any issue in the cause, and *third*—counsel can not but mention it—the matters presented by the brief in support of the motion to dismiss the bill.

* * * * * * * * * *

The only other question presented by the brief for appellees deemed necessary to further discuss, is that presented under the IV head of appellant's brief in chief. It is:

THE JUDGMENTS OF THE COUNTY COURT, UNDER WHICH APPELLANT PURCHASED, ARE RES ADJUDICATA.

Indeed this is the most important question in the record. It stands at the threshhold of any right to recover at all, and unless removed, the decree must of necessity be reversed. It is because of the well recognized doctrine of *res adjudicata* that counsel for appellees devotes the greater part of his brief to its discussion.

The learned judge of the Circuit Court was inclined to the view the judgment *could be* collaterally attacked, when this cause was argued before him early in May, 1882, but upon reargument of the same question immediately thereafter, his views were entirely changed upon the question, and in a very fully considered opinion, reviewing some of the cases cited by appellees' counsel, he fully sustained the doctrine of *res adjudicata* as applicable to the case at bar, as a review of that opinion will demonstrate.

Chicago Theo. Sem. v. *Gage*, 12 Fed. Rep. 398.

Appellant has in his brief in chief, called attention to the fact, in many of the States sales for taxes are had without the formality of judicial proceeding, and that in such case the question here urged might not apply. Counsel is informed that in Wisconsin the collector does not sell for taxes under the authority of a judgment, therefore the case cited by appellees is not pertinent; however, that case has been reversed by this court.

Geekie v. *Kerby Carpenter Co.*, 106 U. S. 379.

As anticipated by counsel in the brief in chief, appellees insist the judgment is not conclusive because it is a *judgment upon default*, and they rely upon the case of *Bellville Nail Co.* v. *People* in support of the proposition. This case is fully con-

sidered in the brief in chief and also in the opinion of Judge Blodgett in *Chicago Theo. Sem.* v. *Gage*, *supra.*

That portion of the opinion in the Bellville Nail Co. case, cited by counsel, which says in substance that because the revenue law has provided the tax deeds should be *prima facie* evidence of certain fact, therefore the judgment upon which the deed is based is not *res adjudicata* it is proper to say is *obiter dicta.*

It can not by any process of reasoning be said that it was the intention of the legislature to change the course of the common law in relation to the conclusiveness of a judgment, because it had provided a tax deed should be *prima facie* evidence of certain fact; but if such is the construction to be given to the legislative action, it equally applies to judgment upon appearance and contest; yet counsel concede had appellees contested in the suit resulting in this judgment, the judgment would be *res adjudicata.*

Again, Sec. 33, Ch. 77, Rev. Stat. Ill. 1874, relating to Judgments and Executions, provides "Any deed which has been heretofore, or which may hereafter be so executed, * * * shall be *prima facie* evidence that the provisions of the law in relation to the sale of the property for which it is or may be given were complied with. * * * "

Would any one for a moment contend that by this provision, the legislature had enacted that a judgment by default in assumpsit under which the execution issued, the sale was made and deed given, could be collaterally attacked? The proposition carries with it a complete refutation.

In conclusion the attention of the court is again

called to the case of *Gelston* v. *Hoyt*, 3 Wheat. 246 cited in the brief in chief, where this question is very fully discussed; at page 320 of the opinion reference is made to the case of *Scott* v. *Sherman*, 2 W. Bl. 977, and its doctrine approved. By reference to that case (*Scott* v. *Sherman*) it will be found the judges were unanimous in holding there was no distinction between a judgment by default and one on appearance and contest.

Scott v. *Sherman*, 2 W. Bl. 977.

Mr. Justice Blackstone, who was at first in doubt upon this question announcing the opinion of the court, said: "I at first inclined to think, that Brother Glyn's distinction was right; and that the condemnation upon default of the owner might be conclusive *in rem*, so that the right of the Crown to the goods should never be contested again; but not conclusive *in personam*, in case the owner could prove they were in fact not seizable, and chose to bring an action against the person seizing for damages, by way of collateral remedy. But, upon full consideration, I am now convinced, that there is no ground for such a distinction. The only possible ground that the plaintiff can rely on in the present case, which is unaccompanied with misbehavior, or any unwarrantable violence, is, that the goods were not in truth liable to be seized by the laws of the customs; although, by the plaintiff's default, they have been condemned in the Exchequer. But I take this condemnation to be conclusive evidence to all the world, that the goods were liable to be seized; and that therefore this action will not lie.

1. Because of the implicit credit which the law gives to any judgment in a Court of record having competent jurisdiction of the subject matter. The

jurisdiction in this case of the Court of Exchequer is not only competent, but sole and exclusive. And though it be said, that no notice is given to the owner in person, and that therefore he is not bound by the condemnation, not being a party to the suit, yet the seizure itself is notice to the owner who is presumed to know whatever becomes of his own goods. He knew they were seized by a revenue officer. He knew they were carried to the King's warehouse. He knew, or might have known, that by the course of law, the validity of that seizure would come on to be examined in the Court of Exchequer, and could be examined nowhere else. He had notice by the two proclamations, according to the course of that Court. He had notice by the writ of appraisement, which must be publicly executed on the spot where the goods were detained. And having neglected this opportunity of putting in his claim, and trying the point of forfeiture, it was his own laches, and he shall for ever be concluded by it, not only with respect to the goods themselves, but every other collateral remedy for taking them. For it would be nugatory to debar him from recovering *directly* the identical goods that are condemned, if he is allowed to recover *obliquely* damages equivalent to their value."

Respectfully submitted,

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ALBERT G. RIDDLE,

Of counsel.